Proposed Finding

Against Acknowledgment of

The Brothertown Indian Nation
(Petitioner #67)

Prepared in Response to the Petition Submitted to the Assistant Secretary - Indian Affairs for
Federal Acknowledgment as an Indian Tribe

AUG 17 2009
(Date)

George T. Skibine
Acting Principal Deputy Assistant Secretary - Indian Affairs
Proposed Finding

The Brothertown Indian Nation
(Petitioner #67)

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**ACRONYMS AND ABBREVIATIONS**

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<td>AODO</td>
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<td>BIN</td>
<td>Brothertown Indian Nation (petitioner 67)</td>
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<td>Code of Federal Regulations</td>
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Figure 1: State Map of Wisconsin

Source: Office of Federal Acknowledgment.
Figure 2: Calumet County, Wisconsin

Source: Wisconsin, Department of Transportation.
Figure 3: Area Map of Brothertown, Wisconsin

Source: Office of Federal Acknowledgment.
Figure 4: Minnesota and Wisconsin Showing Locations Mentioned in PF

Source: Office of Federal Acknowledgment.
Figure 5: Remaining Land Ownership of Brothertown Descendants in Brothertown Township, 1893


Key:
- **X** Lot with land ownership by a Brothertown descendant on the 1839 allotment list or 1901 claims roll.
- **?** Lot with land ownership by a possible Brothertown descendant.
- **sp.** Lot with land ownership by one spouse of a Brothertown descendant on the 1901 claims roll.
- ○ Brothertown village.
### Table 1
1901 Addresses

| Miller Roll | | | | Committee Roll |
|-------------|---|---|---|---|---|---|---|---|---|
| 121 | 21.3 | 21.3 | Brothertown, Wis. | 68 | 32.9 | 32.9 |
| 41 | 7.2 | 28.5 | Calumet County, Wis. | 16 | 7.7 | 40.6 |
| 75 | 13.2 | 41.7 | Neighboring counties (6), Wis. | 27 | 13.0 | 53.6 |
| 153 | 26.9 | 68.5 | Wisconsin | 28 | 13.5 | 67.1 |
| 114 | 20.0 | 88.6 | Minnesota | 58 | 28.0 | 95.2 |
| 29 | 5.1 | 93.7 | States west of Wisconsin or Minnesota | 10 | 4.8 | 100.0 |
| 36 | 6.3 | 100.0 | States east of Wisconsin | 0 | 0.0 | ----- |
| 569 | 100.0 | TOTAL with address | 207 | 100.0 | |

Notes: The Miller Roll included 570 individuals; an address was missing for 1 individual (#553). The Brothertown Committee Roll included 209 individuals; for 2 individuals (#122, #160) an address entry was replaced with a notation that the individual had died in 1901. Two individuals on the Committee’s Roll (#61, #98), one in South Dakota and one in Minnesota, are not found on Miller’s Roll.

INTRODUCTION

The Office of the Assistant Secretary-Indian Affairs (AS-IA) within the Department of the Interior (Department) issues this proposed finding (PF) in response to the petition the Department received from the group known as the Brothertown Indian Nation (BIN), petitioner #67, located in Fond du Lac, Wisconsin. The petitioner seeks Federal acknowledgment as an Indian tribe under Part 83 of Title 25 of the Code of Federal Regulations (25 CFR Part 83), “Procedures for Establishing that an American Indian Group Exists as an Indian Tribe.”

The Assistant Secretary delegated authority to sign some Federal acknowledgment findings, including this PF, to the Acting Principal Deputy-Assistant Secretary-Indian Affairs, effective June 4, 2009.

The evidence submitted by the BIN petitioner and evidence Department staff obtained through its verification research, demonstrates that the BIN petitioner does not meet five of the seven mandatory criteria for Federal acknowledgment: criteria 83.7(a), 83.7(b), 83.7(c), 83.7(e), and 83.7(g). The petitioner meets criteria 83.7(d) and 83.7(f). An explanation of the Department’s evaluation of each criterion is presented in full in sections that follow this introduction. In accordance with the regulations set forth in 25 CFR 83.7, the failure to meet all seven criteria requires a determination that the petitioning group is not an Indian tribe within the meaning of Federal law. Therefore, the Department proposes to decline to acknowledge the BIN petitioner.

Regulatory Procedures

The acknowledgment regulations under 25 CFR Part 83 establish the procedures by which a non-federally recognized group may seek Federal acknowledgment as an Indian tribe, establishing a government-to-government relationship with the United States. To be entitled to such a political relationship with the United States, the petitioner must submit evidence documenting that the group meets the seven mandatory criteria set forth in section 83.7 of the regulations. Failure to meet any one of the mandatory criteria will result in a determination that the group does not exist as an Indian tribe within the meaning of Federal law. The Office of Federal Acknowledgment (OFA) within the Office of the AS-IA has responsibility for Federal acknowledgment, administering the regulations and analyzing petitions based on the evidence in the administrative record.

The time periods for the evaluation of documented petitions are set forth in the acknowledgment regulations in section 83.10. Publication of the notice of the PF in the Federal Register (FR) initiates a 180-day comment period during which the petitioner, and interested and informed parties may submit arguments and evidence to support or rebut the evidence used in the PF. Such comments should be submitted in writing to the Office of the Assistant Secretary-Indian Affairs, 1951 Constitution Avenue, N.W., Mail Stop 34B-SIB, Washington, D.C. 20240,
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Attention: Office of Federal Acknowledgment. Interested and informed parties must provide copies of their submissions to the petitioner.

The regulations at 25 CFR 83.10(k), provide petitioners a minimum of 60 days to respond to any comments on the PF submitted during the comment period. At the end of the response period for the PF, OFA shall consult with the petitioner and interested parties to determine an equitable time frame for consideration of written arguments and evidence that are submitted during the comment and response periods. OFA shall notify the petitioner and interested parties of the date such consideration begins.

After consideration, the AS-IA shall issue a final determination (FD) regarding the petitioner’s status. The Department shall publish a notice of this FD in the Federal Register (FR).

After publication of the notice of the FD, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals (IBIA) under the procedures in section 83.11 of the regulations. A request for reconsideration must be made within 90 days of publication of the notice of the FD. Unless the petitioner or interested party files a request for reconsideration pursuant to section 83.11, the FD will become effective 90 days from its date of publication.

Administrative History

The BIN petitioner submitted a letter of intent to the AS-IA under the name of the Brotherton Indians of Wisconsin (BIW) on April 15, 1980. Notice of the receipt of the letter of intent appeared in the FR on June 5, 1980 (45 F.R. 37893). Notice of the submission of the letter of intent also appeared on July 9, 1980, in The Shawano Evening Leader, a newspaper located in Shawano, Wisconsin, where the petitioner’s office was then located (the office subsequently moved to Fond du Lac, a town approximately 90 miles away). The Department designated BIW as Petitioner #67. BIW submitted its first documentation that included a narrative as well as some documents outlined in the BIW petitioner’s narrative. The Department received this material on February 7, 1996.

The Department conducted an initial review of the petition and determined the petition was ready for consideration and placed the BIW petitioner on the “ready, waiting for active consideration list” (ready list) on February 28, 1996.

In 1995 and 1998, the BIW petitioner submitted additional petition documents on three different occasions. The BIW notified the Department on January 4, 2005, that the group changed its name officially to Brothertown Indian Nation (BIN)\(^1\) on November 20, 2004.

The Department placed the BIN petitioner on active consideration for the PF on June 23, 2008, and received two submissions of additional petition documents from the group during the 60 days following, as allowed by the “directive” of March 31, 2005, and a letter to the petitioner of

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\(^1\) All submissions by the petitioner, whether under the name of Brotherton Indians of Wisconsin (BIW) or Brothertown Indian Nation (BIN), will be cited as “BIN” in this PF.
June 20, 2008 (70 FR 16513). The Department will consider any additional material that it received after the submission deadline of August 22, 2008, for the FD, pursuant to that directive the Department published on March 31, 2005 (70 FR 16515).

Overview of the Petitioner

The Brothertown Indian Nation, petitioner #67, has its headquarters in Fond du Lac, Wisconsin (see Figures 1 through 3). The petitioner was previously known as the Brotherton Indians of Wisconsin. The names Brothertown Indians and Brotherton Indians have been used interchangeably both for the current petitioning group and for a historical Indian population. The petitioner formed its current organization in 1980. It has a governing document and membership criteria. The petitioning group currently has 3,137 members.

For the purposes of this proposed finding, the historical tribe is considered to be the Brothertown Indian tribe of Wisconsin. Federal acknowledgment of the historical Brothertown Indian tribe ended when the tribe complied with the Act of March 3, 1839, that allowed the tribe to divide its lands among its members and its members then to become citizens. Prior to that Act, a Senate proviso to the Treaty of February 8, 1831, created a reservation for the Brothertown Indian tribe and the Senate confirmed that reservation by the Treaty of October 27, 1832. This historical tribe in Wisconsin evolved from the Brothertown Indian tribe of New York State as a large portion of the tribe that moved from New York to Wisconsin.

The best evidence of the membership of the historical Brothertown Indian tribe of Wisconsin is the allotment list created by the tribe in 1839 in compliance with the Act of 1839. That allotment list identified 387 individual tribal members. In dividing the lands of its reservation, the historical Brothertown tribe did not include as tribal members those women who had grown up in the tribe but married outside the tribe, and did not provide allotments of land to such women or their children. In 1901, when Brothertown Indians were eligible to participate in a Court of Claims judgment award to the New York Indians, a Brothertown Business Committee employed the former rules of tribal membership to produce a list of 209 Brothertown claimants. The Federal Government, however, adopted a claims list of 570 Brothertown descendants prepared by Special Agent Guion Miller in 1901 and certified in 1904.

Historical Background of the Brothertown Indians

The Brothertown Indian tribe developed as the result of the amalgamation of a number of Christian Indian converts from several Indian tribes that existed at the time of first contact with non-Indians. These Christian Indians (specifically, Mohegans, Narragansetts, Montauks, Pequots, Nehantic, and Farmington Indians) left their tribes of origin to establish an Indian community based on American–style towns. Having secured land from the Oneida Indian tribe in New York, these Christian Indians from Connecticut, Rhode Island, and Long Island in New York eventually moved to what is now the town of Deansboro, approximately 15 miles from Utica in upstate New York. There the group established the new community of Brothertown (also called “Eoyamquitoowaucomuck”) in 1786. Officials in the State of New York
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acknowledged the Brothertown Indian tribe and a State Act of 1789 set out the boundaries of “Brother Town” (BIN 2005, 43).

Samsom Occom (1723-1792), the most famous Brothertown Indian of the colonial era, grew up in Connecticut as a member of the Mohegan tribe. As a young man, he converted to Christianity and became a pupil of the Rev. Eleazer Wheelock, future founder of Dartmouth College. Occom was an ordained Presbyterian minister who preached to Indians and Whites. He famously parted from Wheelock when he learned that Wheelock had abandoned the idea of educating Indians to serve as missionaries to other Indians and was instead using the proceeds of Occom’s successful British fundraising trip to educate Whites instead. Shortly before the Revolutionary War, Occom and some other Christian Indians proposed leaving the tribes of their birth to establish their own Christian Indian community. After the Revolution, Occom played a central role in founding Brothertown in New York State.

The Brothertown community in New York lasted for approximately 40 years. The members of the tribe endeavored to farm the land in the same manner as their non-Indian counterparts. During this time, the group had an elected body of leaders called “Peacemakers” who acted as overseers for the community. The Brothertown Indian tribe was under the supervision of the State of New York, but the tribe’s leaders dealt with such matters as purchasing land on which to establish a grist mill and dealing with problems involved with the assignment of land within the settlement. However, the Brothertown faced steadily increasing pressure from outsiders encroaching on their land. As early as 1808 some Brothertown left for Indiana, along with members of the Delaware and Munsee, and by 1825 the group as a whole decided to leave New York. They petitioned the Federal Government to help them secure lands controlled by the Menominee on the Fox River near Green Bay. In 1827, the State of New York passed a law allowing the group to sell its New York land and move west to what was then Michigan Territory and is now the State of Wisconsin.

By 1831, the Federal Government secured land from the Menominee for the “New York Indians,” and the Brothertown Indians, Stockbridge Indians, and a portion of the Oneida Indian tribe decided to leave New York. Six Brothertown families consisting of about 40 individuals left New York for Green Bay in 1831, and more followed until only a few Brothertown individuals remained in New York. Members of the Brothertown Indian tribe originally settled close to Green Bay, but the Federal Government provided the Brothertown and the Stockbridge with separate reservations further southwest on the shores of Lake Winnebago, in what became Calumet County. The Brothertown group began petitioning the Federal Government in 1838 to allow them to apportion their reservation lands to individual members and obtain citizenship. Their petition was granted by the Act of 1839, and they divided their reservation lands among their members and became citizens.
Unambiguous Previous Federal Acknowledgment (Section 83.8)

If “substantial evidence” demonstrates the petitioner had “unambiguous” previous Federal acknowledgment as an Indian tribe, then the requirements of the acknowledgment criteria in section 83.7 are modified by the provisions of section 83.8(d). When a petitioner may have been previously acknowledged, the evidence in the record is reviewed to determine whether or not it is sufficient to meet the requirements of “previous Federal acknowledgment” as defined in the regulations (§83.1). This inquiry is made solely for the purposes of this regulatory process. The intent of this evaluation is to determine only the petitioner’s eligibility to be evaluated under the reduced evidentiary burden of section 83.8(d) of the regulations. Three of the seven acknowledgment criteria—criteria 83.7(a), (b), and (c)—are modified by section 83.8(d) for petitioners with unambiguous previous Federal acknowledgment.

The first aspect of the test of unambiguous previous Federal acknowledgment is to determine whether or not the petitioner meets both parts of the regulatory definition of “previous Federal acknowledgment”: that the Federal Government took action regarding the group that was “clearly premised on identification of a tribal political entity,” and that the Federal action indicated “clearly the recognition of a relationship between that entity and the United States” (§83.1). Both the text of section 83.8 and the explanatory comments in the preamble to the regulations state that previous acknowledgment must be “unambiguous” (§83.8 and 59 FR 9283). The second aspect of the test of unambiguous previous Federal acknowledgment is to determine whether or not the petitioner has a claim to have evolved from the previously acknowledged Indian tribe. This part of the test requires an initial threshold determination of whether or not most of the petitioner’s members are the descendants of the Indian tribe previously acknowledged by the Government. If the petitioner meets this threshold requirement, then the evidence must also show that these descendants participated in some activities together after the last date of Federal acknowledgment so that the petitioner is able to advance a claim that it has evolved as a group from the previously acknowledged Indian tribe.

The Brothertown Indian tribe of Wisconsin was previously acknowledged by the United States in a Senate proviso to its approval of the Treaty of February 8, 1831, with the Menominee; in the Treaty of October 27, 1832, with the Menominee; and in the Act of March 3, 1839, which brought that Federal acknowledgment to an end. This previous Federal acknowledgment was clearly premised on identification of a tribal political entity and recognized a relationship between that entity and the United States. Most of the petitioner’s members descend from the previously acknowledged tribe and the petitioner is able to advance a claim that it may have evolved as a group from that previously acknowledged tribe. The petitioner thus meets the two aspects of a test of unambiguous previous Federal acknowledgment. This evidence of a treaty relationship and congressional action meets both the “unambiguous” and “substantial evidence” requirements of this section. The last date of Federal acknowledgment of the Brothertown Indian tribe of Wisconsin is considered to be November 26, 1839, the date on which the President of the United States received a report from the Brothertown board of commissioners indicating the tribe’s compliance with the provisions of the Act of 1839.
The Brothertown Indians of Wisconsin were signatories to the Treaty of October 27, 1832, between the Menominee and the United States. Three men representing the Brothertown—William Dick, Daniel Dick, and Elcanah [Elkanah] Dick—signed an appendix to that treaty (United States 10/27/1832, Appendix). They gave their consent to modifications insisted upon by the Menominee to a proviso the United States Senate made a part of its consent to an earlier treaty with the Menominee, the Treaty of February 8, 1831. The Senate in its resolution consenting to the Treaty of 1831 provided that one township of land would be “granted for the use of the Brothertown Indians” (United States 2/8/1831, Proviso). Such a provision was not part of the text of the treaty presented to the Senate for its approval. In view of several such new provisions in the Senate resolution, a new treaty was made with the Menominee in 1832 on the grounds that the Treaty of 1831 had been “conditionally ratified” by the Senate and assent to those conditions had to be obtained from the Menominee (United States 10/27/1832). The Menominee objected to one of the Senate provisions, but gave their assent to the grant of land for the Brothertown. The consent given by the Brothertown representatives to the Treaty of 1832 thus did not involve any modification of the Indian reservation created for them by the Senate.2

The Brothertown Indian tribe was also acknowledged by Congress in the Act of March 3, 1839. That Act expressly referred to the “tribe of Brothertown Indians” (U.S. Congress 3/3/1839, sec. 1, sec. 2). It acknowledged that a tract of land had been “reserved for the use of the Brotherton or Brothertown Indians” by treaties with the Menominee, and thus that a Federal relationship existed (sec. 1). The Act identified a tribal political entity by noting the “existing laws, customs, [and] usages” of the tribe (sec. 2, sec. 4), by referring to the “town clerk of said tribe” as an existing political office (sec. 5), and by requiring the tribe to hold an election for a board of commissioners (sec. 3) in order to utilize the provisions of the Act. The Act of 1839 acknowledged an existing Indian tribe with existing tribal rights recognized by the Federal Government by declaring that the Brothertown Indian tribe’s “rights as a tribe or nation” would “cease” (sec. 7).3

The petitioner is able to present a claim to have evolved from the previously acknowledged Indian tribe. The petitioner’s current members claim descent from members of the historical Brothertown Indian tribe. Some of the petitioner’s members have not yet demonstrated that descent, but the evidence in the record indicates that most of the petitioner’s members descend from the previously acknowledged Indian tribe (see criterion 83.7(e)). After the last date of previous Federal acknowledgment in 1839, Brothertown descendants participated in several activities together such as submitting a petition to the President in 1847 and a memorial to Congress that resulted in an Act of 1878, entering into agreements with attorneys at various times during the 19th century to seek claims from the Federal Government including an agreement signed by 147 people in 1886, preparing a roll of individuals considered eligible to

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2 Brothertown Indians were also mentioned in the Treaty of January 15, 1838, made at Buffalo Creek in New York State. That treaty provided a tract of land west of the State of Missouri as a “future home” for the New York Indians, including the “Brothertowns residing in the State of New York” (United States 1/15/1838). That treaty was not signed by any Brothertown representatives. A “Census of the New York Indians as Taken in 1837,” which was attached to the treaty as “Schedule A,” listed the “Brothertowns” with a population of 360.

3 See the evaluation of criterion 83.7(g) for a discussion of the absence of Federal acknowledgment after 1839.
receive a share of a claims award in 1901, and observing the 100th anniversary of Brothertown settlement in Wisconsin as part of a church celebration in 1934.

These activities involved some ancestors of the petitioning group acting together in a way that asserted their claim as descendants of the historical Brothertown Indian tribe or celebrated their historical continuity from the original Brothertown Indian settlement. The links of some members of the current petitioner to their ancestors who claimed a link to the historical Indian tribe by engaging in these activities provides the Brothertown petitioner with an ability to advance a claim to have evolved as a group from the previously acknowledged Brothertown Indian tribe. The petitioner’s eligibility to be evaluated under the criteria as modified by section 83.8 depends on its ability to advance a claim to have evolved as a group from the previously acknowledged tribe, not on its ability to demonstrate the validity of that claim by meeting the criteria for acknowledgment. The merits of the petitioner’s claim to have continued the existence of the historical tribe is evaluated under the acknowledgment criteria.

The Senate proviso to the Treaty of 1831, the Treaty of 1832, and the Act of 1839 constitute unambiguous previous Federal acknowledgment of a Brothertown Indian tribe. These Federal actions identified a Brothertown tribal political entity and acknowledged a relationship between that Indian tribe and the United States, and thus satisfy both parts of the definition of previous Federal acknowledgment in section 83.1. Evidence that a predominant portion of the petitioner’s members descend from the previously acknowledged Indian tribe and some evidence in the record of group activities by Brothertown descendants since 1839 allow the petitioner to advance a claim to have evolved from the previously acknowledged Indian tribe. For these reasons, the petitioner is eligible to be evaluated under section 83.8 of the acknowledgment regulations. Therefore, the Brothertown petitioner will be evaluated on the basis of whether or not it meets the seven mandatory criteria in section 83.7 as modified by section 83.8(d), from last Federal acknowledgment in 1839 until the present.
CONCLUSIONS UNDER THE CRITERIA (25 CFR 83.7)

The Brothertown Indian Nation (BIN), petitioner #67, submitted evidence for this proposed finding (PF), and OFA staff conducted limited research to verify and evaluate the evidence, arguments, and interpretation that the petitioner and interested parties submitted. OFA staff conducted interviews and collected documentation during field trips to Wisconsin in October 2008 and December 2008. Additionally, OFA conducted verification research using Federal census records through the Ancestry.com website to verify genealogical claims. However, the burden of providing sufficient evidence under the criteria in the regulations rests with the petitioner. The BIN petitioner did not submit a few of the documents it cited in its narratives, and the petitioner is encouraged to submit a copy of all documents cited. It is not the responsibility of OFA to obtain copies of documents cited that the petitioner did not provide.

This PF evaluates the evidence in the record. The petitioner may submit other evidence during the 180-day comment period following the publication of the notice of the PF. Such new evidence may result in a modification or reversal of the PF’s conclusions. The Department will make a final determination (FD) and publish notice of it after the receipt of any comments and responses. The Department will base the FD on both the evidence used in formulating the PF and any new evidence the petitioner and interested parties submit during the 180-day comment and 60-day response periods.

The evidence submitted by the BIN petitioner, and evidence the OFA staff obtained through its verification research, demonstrates that the BIN petitioner does not meet five of the seven mandatory criteria for Federal acknowledgment: criteria 83.7(a), 83.7(b), 83.7(c), 83.7(e), and 83.7(g). The petitioner meets criteria 83.7(d) and 83.7(f). In accordance with the regulations set forth in 25 CFR Part 83.7, the failure to meet all seven criteria requires a determination that the petitioning group is not an Indian tribe within the meaning of Federal law. Therefore, the Department proposes to decline to acknowledge the BIN petitioner.

The proposed finding reaches the following conclusions for each of the mandatory criteria in 25 CFR Part 83.7:

This PF treats the Brothertown Indian tribe of Wisconsin that was acknowledged by the United States Government until 1839 as the “historical Indian tribe.” This historical tribe evolved from the Brothertown Indian tribe of New York State when a large portion of the tribe that moved from New York to Wisconsin. At an earlier time, portions of several historical Indian tribes of Rhode Island, Connecticut, and Long Island had combined to form the Brothertown Indian tribe of New York. The petitioner may meet the acknowledgment criteria by demonstrating that it is a continuation of the Brothertown Indian tribe of Wisconsin that occupied a reservation created for it in Wisconsin by the United States Senate in 1831 and that divided its reservation lands among its members in 1839.
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Conclusions Under the Criteria (25 CFR 83.7)

The BIN petitioner does not meet the requirements of criterion 83.7(a). As modified by section 83.8(d)(1), the petitioner must be identified since last Federal acknowledgment in 1839. The evidence in the record demonstrates that external observers identified a historical Brothertown group from 1839 until 1855. Between 1855 and 1981, outside observers periodically identified a Brothertown Indian entity. Most of the periodic identifications and most of those made since 1981 linked the contemporary group being identified to the previously acknowledged historical tribe, thus meeting an additional requirement for this criterion added by section 83.8(d)(1). However, because the periodic identifications between 1855 and 1981 are separated by long periods of time in which the petitioner or its members’ ancestors were not identified as an Indian entity, the petitioner does not satisfy the standard of “substantially continuous” identification stated in this criterion. The petitioning group has been identified as an American Indian entity since 1981. However, the petitioner has not been identified on a substantially continuous basis since 1839. Therefore, for the period since 1839 the BIN petitioner does not meet the requirements either of criterion 83.7(a) as modified by section 83.8(d)(1) or, alternatively under section 83.8(d)(5), of unmodified criterion 83.7(a).

The BIN petitioner does not meet the requirements of criterion 83.7(b). As modified by section 83.8(d)(2), the petitioner must demonstrate only that a predominant portion of the petitioning group comprises a distinct community “at present.” For this case, “at present” is considered to be the period since the petitioner formally organized in 1980. The character of the current group appears to be that of a highly dispersed descent group with some active members. There is no available evidence in the record that an informal community existed in 1980 composed of the same people currently enrolled with the petitioner. Most members who have strong social ties to other members formed these relationships through the activities of the group’s formal organization. Outside of these active participants, few members of the group have strong social ties to each other. For the period from 1980 to 2009, there is insufficient evidence that a predominant portion of the petitioning group’s members regularly associate with each other or that the petitioner’s members comprise a distinct community. Therefore, the BIN petitioner does not meet the requirements of criterion 83.7(b) as modified by section 83.8(d)(2).

The BIN petitioner does not meet the requirements of criterion 83.7(c). The evidence in the record does not demonstrate that authoritative, knowledgeable external observers identified leaders or a governing body of the petitioning group on a substantially continuous basis since the date of last Federal acknowledgment. Therefore, the petitioner does not meet the requirements of criterion 83.7(c) as modified by section 83.8(d)(3) for the historical period prior to “at present.” Alternatively under the provisions of section 83.8(d)(5), the petitioner does not meet the requirements of criterion 83.7(c), because the evidence in the record is insufficient to demonstrate that the BIN petitioner or any group antecedent to it maintained political influence or authority over its members from 1839 until the present. The evidence in the record prior to the inception of the petitioner’s organization in 1980 indicates that the Brothertown descendants organized almost exclusively to pursue various claims against the Federal Government. There is little evidence in the record of informal leadership or political influence for other purposes among the Brothertown descendants who remained in and around Calumet County. After 1980, when the current petitioner organized, its governing body has provided some services for its members, but this activity is of recent origin and appears to be the result of the group’s establishment as a formal organization. The initial organization was not the formalization of a
previously existing entity, but was formed by the gradual accumulation of descendants, many of whom did not know each other. The petitioner has not demonstrated it maintained political influence or authority over most of its members at any time since 1839. Therefore, the BIN petitioner does not meet the requirements of criterion 83.7(c).

The BIN petitioner meets the requirements of criterion 83.7(d). The petitioner submitted a copy of its governing document which includes its membership criteria.

The BIN petitioner does not meet the requirements of criterion 83.7(e). The petitioner submitted a membership list on June 24, 2008, that includes 3,137 living members, both adults and minors. The evidence in the record shows that almost all of the petitioner’s members claim descent from individuals who were members of the historical Brothertown Indian tribe of Wisconsin in 1839. However, this PF finds that only 51 percent (1,593 of 3,137) of BIN members have demonstrated descent from an individual known to be a member of the historical Brothertown Indian tribe of Wisconsin. This evaluation also indicates that an additional 42 percent (1,309 of 3,137) of BIN members have illustrated their claims of descent from the historical Wisconsin Brothertown Indian tribe, but have not documented that descent. This may be demonstrated for the FD. The petitioner has not demonstrated for this PF that its members descend from an historical Indian tribe. Therefore, the BIN petitioner does not meet the requirements of criterion 83.7(e).

The BIN petitioner meets the requirements of criterion 83.7(f). A review of the membership rolls of those Indian tribes in Wisconsin and Minnesota that would most likely include the BIN petitioner’s members revealed that the petitioner’s membership is composed principally of persons who are not members of any federally acknowledged North American Indian tribe.

The BIN petitioner does not meet the requirements of criterion 83.7(g). Congress stated in the Act of 1839 that the Brothertown Indian tribe’s “rights as a tribe” recognized by the Federal Government, and specifically its power to act as a political and governmental entity, would “cease and determine,” that is, end and be limited permanently. The acknowledgment regulations provide in this criterion that a petitioner whose Federal relationship has been terminated or forbidden cannot be acknowledged. Congress in the Act of 1839 brought Federal recognition of the relationship with the Brothertown Indian tribe of Wisconsin to an end. By expressly denying the Brothertown of Wisconsin any Federal recognition of a right to act as a tribal political entity, Congress has forbidden the Federal Government from acknowledging the Brothertown as a government and from having a government-to-government relationship with the Brothertown as an Indian tribe. The Act of 1839, by its “cease and determine” language, has both expressly ended and forbidden the Federal relationship for this petitioner. Therefore, the BIN petitioner does not meet the requirements of criterion 83.7(g).

Failure to meet any one of the mandatory criteria results in a determination that the petitioning group is not an Indian tribe within the meaning of Federal law. The BIN petitioner meets criteria 83.7(d) and (f), but does not meet criteria 83.7(a), (b), (c), (e), and (g). Therefore, this PF concludes that the BIN petitioner does not meet all the mandatory criteria to be acknowledged as an Indian tribe.
Criterion 83.7(a)

83.7(a) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. . . . by other than the petitioner itself or its members.

83.8(d)(1) The group meets the requirements of the criterion in §83.7(a), except that such identification shall be demonstrated since the point of last Federal acknowledgment. The group must further have been identified by such sources as the same tribal entity that was previously acknowledged or as a portion that has evolved from the entity.

Introduction

The evaluation under this criterion is modified for petitioners with previous Federal acknowledgment as an Indian tribe. Section 83.8(d)(1) balances the reduced evidentiary burden for criterion 83.7(b) with an increased evidentiary burden for criterion 83.7(a). Previously acknowledged petitioners are not required to demonstrate their existence as a historical community from the date of last Federal acknowledgment to the present, but are required to demonstrate they have been identified as an Indian entity for that entire period, not just from 1900 to the present. For the Brothertown petitioner, this requires an additional demonstration that the petitioning group has been identified from 1839 to 1900. The petitioner presented evidence for this period in its submission in 1996 in a narrative labeled “83.7(a)” and repeated the main points of its argument in its submission in 2005 (BIN 1996, 1-71; 2005, 4 n.17). Section 83.8(d)(1) modifies the evaluation for this criterion in one other way, by adding the requirement that identifications of the petitioning group also identify it as either the same tribal entity that was previously acknowledged or a group evolved from that historical tribe.

The evidence in the record demonstrates that the petitioner has been identified on a substantially continuous basis since 1981. A historical Wisconsin Brothertown group was identified from 1839 to 1855. A Brothertown group has been identified on occasion between 1855 and 1981, but these examples do not demonstrate the petitioning group was identified on a substantially continuous basis between 1855 and 1981. Most of the examples of identification in the record meet an additional burden for this criterion as modified by section 83.8(d)(1) in that they link the contemporary group to the previously acknowledged tribe. The petitioner does not meet the additional burden under section 83.8(d)(1) of being identified since the last date of Federal acknowledgment in 1839 rather than since 1900, but the petitioner does not fail to satisfy the criterion because of the longer chronological period. Therefore, the petitioner does not meet the requirements of the criterion as modified by section 83.8(d)(1).
The acknowledgment regulations provide in section 83.8(d)(5) that the petitioner may be evaluated alternatively under the provisions of criterion 83.7(a) since the last date of Federal acknowledgment. However, this alternative does not produce a different evaluation for this petitioner. Whether evaluated under section 83.8(d)(1) or 83.8(d)(5), the petitioner must have been identified since the last date of Federal acknowledgment. Under either section the petitioner has not been identified on a substantially continuous basis since 1839. Because most examples of the identification of the petitioning group also link the contemporary group to the previously acknowledged tribe, this additional requirement in section 83.8(d)(1) does not result in an evaluation under section 83.8(d)(1) different from that under section 83.8(d)(5) on the basis of the evidence available for this proposed finding. Thus, alternatively under section 83.8(d)(5), the petitioner does not meet the requirements of criterion 83.7(a) since 1839.

The petitioner’s presentation for this criterion is found in three narratives submitted in 1996, 2005, and 2008 (BIN 1996, summary at 96-98; 2005, 4-29; 2008, 1-24). These submissions tend to narrate or list historical events or activities rather than to explain how this evidence or these interpretations demonstrate that an observer outside the petitioning group identified the group as an Indian entity—whether as “Brothertown,” “Brotherton,” or in some other way. The petitioner’s presentation for criterion 83.7(a) is based in part on its claim that “we have identified ourselves as an American Indian entity on a substantially continuous basis both prior and subsequent to 1900” (BIN 2008, 1). This argument is based on a misunderstanding of the requirements of this criterion. The language of the regulations states an acceptable identification must be made by an individual or organization “other than the petitioner itself or its members” (§83.7(a)). The petitioner’s presentation of its case also tends to refer to categories of evidence—such as newspaper articles, for example—without citing specific examples submitted for the record. The following evaluation attempts to locate such claimed evidence and considers other relevant evidence as well.

**Evaluation**

The scholarly literature of the past two decades cited by the petitioner in one of its narratives on this criterion provides descriptions of the historical Brothertown Indian tribe prior to 1839, but does not provide evidence of the identification of a Brothertown entity after that date (BIN 2008, 18-23). Several of these books or papers deal with Samson Occum and the Brothertown in New York (Ottery 1989; Brooks 2006; Dzilenski 2008). A collection of writings from 1751-1776, writing from “early America,” a discussion of Brothertown relations with the Stockbridge prior to 1839, a study of the Brothertown during the 50 years after the American Revolution, and a proposal for a book about the Brothertown during the colonial and early national periods also provide no identification of a post-1839 Wisconsin Brothertown group (Murray 1998; Wyss 2000; Oberly 2005; Rice 2008; Silverman n.d.). Scholarly archaeological excavations, even of sites in Wisconsin, do not provide evidence that any historical observer made a contemporaneous identification of an existing Indian entity (Cipolla 2007). A paper dealing with the Brothertown

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4 Two narratives marked 83.7(a) were submitted in 2005. One narrative (“Footnote 1”) is the same text as the 1996 submission, but paginated differently. This document has not been considered as a separate submission of the petitioner’s presentation for this criterion.
between 1824 and 1839 and a published work that cites an 1830 map, an 1832 map, and a map of the location of the Brothertown reservation do not identify an Indian group after 1839 (Jarvis 2006; Bieder 1995 citing Tanner 1987).

After the Act of 1839, some external observers identified a continuing Brothertown group or Indian settlement, even if they, and others, may have described Brothertown Indians as citizens and no longer as a recognized tribe. In an Act of the State of New York directing that the principal of an annuity the State held for the Brothertown Indian tribe be paid to those Indians, the State legislature in 1841 identified the Brothertown in Wisconsin as an Indian entity when it referred to them as “that portion of said tribe . . . who have removed to Brown county, in the territory of Wisconsin” (New York 5/25/1841). In 1842 the Commissioner of Indian Affairs did not include the Brothertown in his survey of the Indians remaining east of the Mississippi River, saying they “have been placed upon a footing with our own citizens by act of Congress” (Crawford 11/16/1842). Although the Commissioner in 1845 authorized the payment of educational funds to schools with Brothertown students, he said he had no authority to pay the funds to a Brothertown representative or group (Crawford 6/10/1845). In both these examples, the Commissioner declined to identify a Brothertown Indian entity.

An officer in the Army Corps of Engineers identified a Brothertown Indian entity in 1845, while describing the condition of a military road, by saying the road near Lake Winnebago “passes thro’ the Stockbridge and Brotherton Indian Settlements” (McClellan 9/13/1845). Some observers who pointed out that the Brothertown were now citizens also referred to them as a distinct population or group. An Indian sub-agent said in 1846 that the “Brothertown Indians . . . have two excellent schools, under the territorial township system, (for they are citizens of the United States)” (Ellis 9/24/1846). The Governor of Wisconsin said in 1847 stated that one township in the State “is occupied by what was termed the Brothertown Indians—but they have been citizenized by act of Congress” (Dodge 3/26/1847). In 1854 a superintendent of Indian affairs, who stated that the Brothertown had become citizens, reported that he had traveled through “their township” while visiting the Stockbridge Indians, but also observed that “many white men . . . [had] settled among them” (Huebschman 9/28/1854). The next year the superintendent referred to the township of Manchester as “the home of the Brothertons” (Huebschman 10/1/1855). Thus, at least until 1855 some external observers identified an Indian entity by describing Brothertown citizens as still constituting a distinct Indian settlement.

The petitioner contends that an 1854 Act of Congress identified a Brothertown Indian tribe (BIN 1996, 74; 2005, 5 n.17, #11). That Act required the Secretary of the Interior to submit a report on a possible claim of the Brothertown tribe against the United States based on allegations of an uncompensated historical taking of tribal property by the Federal Government (U.S. Congress 7/31/1854). The issue Congress referred to the Secretary involved a claim on behalf of a historical Indian tribe. In cases in which Congress instead passed a jurisdictional act to authorize such a historical claim being presented in Federal claims court, the Secretary of the Interior usually had the responsibility to identify a contemporary group of the descendants of the historical tribe for purposes of bringing the lawsuit. That condition did not apply to the Act of 1854. That Act referred to a historical tribe without expressly identifying a contemporary group. The Secretary of the Interior’s required reply to Congress forwarded a report by the Commissioner of Indian Affairs who concluded the historical claim was unfounded and stated
that Brothertown Indians had “lost . . . their relations to the government as an Indian tribe,” thus failing to identify a contemporary Indian entity (Manypenny 1/25/1855, 28).

For the period between 1855 and 1875, the petitioner presents no examples of the identification of a Brothertown Indian entity. The petitioner asserts that the “tribe” continued to hold meetings, but does not show that any outsider identified a group doing so, with the exception of an 1875 newspaper article (BIN 1996, 97). The petitioner says that Brothertown descendant E.M. Dick wrote a “Brothertown Column” for the newspaper in Chilton for many years, without providing examples or citations to specific articles (BIN 2008, 16). Such columns reported local news. If Dick referred to a Brothertown group or organization in any of these newspaper reports, such self-identification by a group member would not meet the requirements of this criterion. In 1875, the Chilton Times reprinted a report by a Green Bay newspaper of an election held in the town of Brothertown of “chiefs” to serve on an “Indian council” (Chilton Times 2/13/1875). This reference to an “Indian council” representing a group of Brothertown Indians is a contemporaneous identification of a Brothertown Indian entity in 1875.

Congress identified a group of Brothertown Indians in 1878 when it passed an Act which appointed four trustees for the group to sell at a public auction some lands of the former Brothertown Reservation left unpatented by the allotment list of 1839 (U.S. Congress 4/20/1878; BIN 1996, 77, 97; 2005, 5 n.17, #12). In the Act of 1878, Congress authorized the sale of these lands when a group of Brothertown Indians petitioned the trustees to do so. By providing for this action by a Brothertown group, Congress identified a contemporary Indian entity. The petitioner claims that the Wisconsin Supreme Court also identified the petitioning group in its 1885 opinion on the title to a tract of land the trustees appointed by the Act of 1878 attempted to sell (BIN 1996, 77-79). However, the Court in 1885 did not itself make a contemporaneous identification of an Indian group, but rather suggested that an identification of a group capable of receiving the benefits of the sale of the land was implicitly made by Congress in the Act of 1878 (Fowler v. Scott 1885). A public notice published by a trustee in the local newspaper of a public auction of the unpatented lands is a statement by a member of the group rather than an identification of a group by an external observer (Chilton Times 11/19/1887; BIN 2005, 5 n.17, #12).

In a history of Wisconsin Territory published in 1885, Moses Strong described the Act of 1839 relating to Brothertown Indians and added, “[s]ince then they have been recognized as citizens . . . and have become homogeneous with the other inhabitants of the State” (Strong 1885, 115). This description did not identify a contemporary Indian entity. The petitioner mentions a report on the Indian population of the United States in 1890 published in 1894 by the Census Office (BIN 1996, 74). No tables of the Wisconsin Indian population in this report included an entry for Brothertown Indians. The text included a statement that the “Brothertown Indians are now consolidated with the Stockbridge Indians at Green Bay agency” (U.S. Census Office 1894, 618). This statement referred to a Stockbridge Indian tribe as one which included some individuals with some Brothertown ancestry, but did not identify a contemporary Brothertown Indian entity. The petitioner mentions the 1893 Act of Congress that authorized the Court of Claims to hear the claims of “the New York Indians,” but does not expressly contend this Act was an identification of the petitioning group (BIN 2005, 6-7; 2008, 1). The Act did not mention
Brothertown Indians. It referred to the historical tribes who were parties to an 1838 treaty and did not identify a contemporary Indian entity (U.S. Congress 1/28/1893).5

The Federal Government in 1901 included individual descendants of the historical Brothertown tribe of 1839, and ancestors of the current petitioning group, on a list of people eligible to receive a portion of the Brothertown share of a claims award made to the New York Indians. It later made payments to those individuals. Contrary to the petitioner’s assertion, the receipt of claims award payments by Brothertown individuals does not constitute “proof” of the identification by the Federal Government of a Brothertown Indian entity at that time (BIN 2005, 6-7, 28; see also BIN 1996, 97). In creating payment rolls, the Government identified individual descendants of historical tribes. It identified historical tribes for this purpose, but not contemporary ones. The Office of Indian Affairs stated the claims roll would consist of “persons” who could show “they are actually of Brothertown blood and parentage” (U.S. Commissioner of Indian Affairs 9/11/1901). The individual, rather than tribal, character of this process was affirmed by an auditor of the Treasury Department who referred to “the individual beneficiaries” of the award and by the Court of Claims ruling that the enrollment of the beneficiaries of the award was of “individuals and not of tribes or nations” (Timme 4/18/1904; U.S. Court of Claims 6/13/1906).

The Acting Commissioner of Indian Affairs identified a Brothertown Indian entity, however, while accepting its help in preparing the claims roll. In a letter to E.M. Dick in September 1901, he stated his office was willing to work with “the Business Committee of the Brothertowns” to provide it with application forms and to obtain information from it about eligible beneficiaries of the claims award (U.S. Commissioner of Indian Affairs 9/11/1901). He told Dick there were several specific things “your committee” could do to identify claimants. Although the Acting Commissioner welcomed the help of this Brothertown group in finding individual Brothertown descendants, he made it clear to the group that his task was to identify all such descendants. The list of descendants prepared by the Office of Indian Affairs included more than twice as many people as the Business Committee’s roll, which indicates the Department of the Interior did not accept the position the award should be limited to the committee’s own members. The petitioner incorrectly contends that the Department required a Brothertown tribe to submit a membership list and dealt with this Brothertown group as a tribe (BIN 1996, 82; BIN 2005, 6), but the Acting Commissioner did identify the Brothertown Business Committee as an Indian entity in the process of preparing a claims roll in 1901.

Several newspaper articles in the record refer to Brothertown Indians in the decade of the 1900s, but not all of them identify an Indian entity associated with the petitioning group. A 1901 article in the New York Times noted a dispute between two lawyers about which descendants of the Brothertown were legitimate beneficiaries of the award to the New York Indians. An attorney from Massachusetts claimed to represent Brothertown claimants living in Kansas, while the claims attorney from New York disparaged the other lawyer’s clients as the “so-called Brothertowns of New England” (New York Times 1/5/1901; BIN 2008, 1). Neither attorney

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5 The U.S. Court of Claims in its 1895 decision and the Supreme Court of the United States in its 1898 opinion on appeal of the Court of Claims decision both found that Brothertown Indians were among the parties to the treaty of 1838 (U.S. Court of Claims 11/18/1895, 414; U.S. Supreme Court 4/11/1898, 26). As with the Act of 1893, these judicial decisions referred to a historical Brothertown group but not to a contemporary Indian entity.
identified a contemporary Indian entity in Wisconsin. A credulous article in the local *Chilton Times* in 1902 about “decadent Indians” electing a “white chief” identified a contemporary “Brothertown Indian Nation” and stated “members of the tribe live mainly in this [Calumet] county” (*Chilton Times* 4/27/1902; BIN 2005, 7). In 1903, that newspaper reprinted an article that reported the local congressman had appeared before the Department of the Interior on behalf of the “descendants” of the original 360 members of the tribe in 1838 (*Chilton Times* 4/11/1903). This statement did not identify a contemporary Indian entity, but the article’s claim there were about 500 “members of the Brothertown Indians” referred to an existing Indian group.6

Scholarly works and government publications from the first quarter of the 20th century in the record for this case do not identify a contemporary Brothertown Indian entity. The Smithsonian Institution’s *Handbook of American Indians North of Mexico*, edited by Frederick Webb Hodge and published in 1907, described the historical “Brotherton” band but stated that soon after its arrival in Wisconsin the band “abandoned their tribal relations and became citizens” (F. Hodge 1907, 166). This reference work thus failed to identify a Brothertown Indian entity as existing at the time of its publication. The petitioner notes that a published report of the results of the 1910 Federal census stated there were 162 “Brotherton” Indians in Wisconsin (BIN 1996, 74). This observation referred to Indian individuals but did not identify them as constituting an Indian entity. In 1923 the *Wisconsin Blue Book* published by the State of Wisconsin included an article by Charles E. Brown entitled “Wisconsin Indians.” This article included a very brief paragraph on the history of the “Brotherton” that was very similar to the text in Hodge’s *Handbook* and did not go beyond their settlement on the shore of Lake Winnebago in the 1830s (Brown 1923, 68). This article thus failed to identify a contemporary Brothertown Indian entity in 1923.

For the period from the 1910s through the 1950s, the petitioner’s presentation for this criterion consists mostly of asserted examples of a group or families engaging in social or political activities rather than examples of an outside observer identifying a group as an Indian entity. The petitioner contends this criterion is met because of the family reunions and homecomings, wedding anniversaries, and local social activities of some historical members of its group during the 1910s and 1920s (BIN 2005, 7-8, 19-20, 24). It claims these activities are demonstrated by oral history interviews, which it does not specifically cite; the diary of a Brothertown descendant for the years 1917 to 1923; and a newspaper article from 1918. A diary and oral histories of group members would provide only self-identification even if specific examples of identification of a group were to be provided by the petitioner. The 1918 column of local news from Brothertown village or township, consisting of reports of who was visiting, traveling, or ill, included the statement that “Sid Welsch Sr. [sic] and family of Gillett spent Sunday at the home coming at Quinney” (*Fond du Lac Commonwealth* 7/6/1918; BIN 2005, 19). This statement does not identify any Indian entity.

6 The petitioner cites a 1931 newspaper article about a 1908 football game as an identification of the petitioning group in 1908 (BIN 2008, 11). A football team—the “Red Springs of the Brothertown reservation”—is not the type of entity that satisfies the requirements of this criterion (*Green Bay Press-Gazette* 11/28/1931). References to individual players as Indians or to a non-existent reservation do not identify an Indian entity, and an account not based on personal experience would not be accepted as a recollection of a contemporaneous identification.
Another type of evidence the petitioner presents for the period from the 1910s to 1930s is correspondence received by Brothertown individuals from Indians in New York. The petitioner refers to correspondence with Montauk Indians of Long Island in the years 1919 to 1921, without citing specific documents (BIN 2008, 14). This claim appears to refer to a series of letters from Chief Wild Pigeon, the Sachem of the Montauk, to M.F. [Marcia F.] Johnson of Malone, Wisconsin, in 1919 and 1920 (Wild Pigeon 4/20/1919, 4/29/1919, 8/6/1919, 4/6/1920, 4/15/1920). These letters were addressed to Johnson as an individual and concerned her claims to Montauk membership. Wild Pigeon’s interest was only with those Brothertown Indians of “Montauk blood” who could provide genealogical evidence “through your Montauk side” (Wild Pigeon 4/29/1919, 8/6/1919). He recruited Brothertowns with Montauk ancestry to be Montauk members, and a list attached to one of his letters suggested some had contributed to litigation by the Montauk as early as 1906. Wild Pigeon referred to “our Brothertown Montauks” (Wild Pigeon 4/29/1919) and revealed his interest in finding the “Brothertown Branch of the Montauks” (Wild Pigeon 4/6/1920). This body of correspondence indicated an awareness of the existence of Brothertown Indians in Wisconsin but did not identify a Brothertown Indian entity.

The petitioner presents a narrative of the activities during the 1920s and 1930s of various local Six Nations clubs, the Oneida Indian Minnie Kellogg and her husband in promoting such clubs and various claims to New York lands, a case in Federal court about New York lands, a New York legislator who conducted an investigation of the status of Indians in New York, and a Senate hearing about the Kelloggs’ activities in which it claims some Brothertown Indians were involved, without attempting to demonstrate that any outside observer of such activities identified a Brothertown Indian entity involved in them (BIN 1996, 83-94, 97-98; 2005, 8-18, 29; 2008, 2-3). The petitioner notes that these Six Nations clubs did not consist exclusively of Brothertown descendants and does not contend that any one club represented the Brothertown (BIN 2005, 16 n.67). Therefore, even if the petitioner were to provide documentation of external identifications of these Six Nations clubs, it appears such statements would not demonstrate identification of the petitioning group. A local newspaper notice in 1930 that a local man who was “a descendant” of the Brothertown tribe traveled to New York to participate in the Senate hearing did not identify a contemporary Indian entity; it provided information only about an Indian individual (Chilton Times 1/3/1930; BIN 2008, 3-4).

In 1934, the Baptists of Wisconsin held a centennial celebration in which they used the arrival of a Brothertown minister; Rev. Thomas Dick, at the Brothertown reservation in 1834 as their denomination’s beginnings in the State (BIN 2005, 21; 2008, 16-17). This ceremony was held on the east shore of Lake Winnebago in August 1934 and, according to a participant, consisted of “a score of Indians” and more than 1,000 non-Indians (Hayne 1935, 147). As part of the preparation for this celebration, it appears, a group of Narragansett Indians, gathered at the “old Indian Meeting House” in Rhode Island, sent their “greetings” and “tribute” to “the Brothertown Indians in Wisconsin” (Williams et al. 7/22/1934; BIN 2005, 21-22; 2008, 11 and n.15). The record does not include materials that demonstrate the Narragansett had knowledge of any Brothertown group, or contact with it, immediately prior to this greeting. This message was addressed to the individual Brothertown Indians in Wisconsin and did not specifically mention

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7 Newspaper accounts of this celebration portrayed it as a Baptist event and mentioned no contemporary Indian group or Indian participation (Fond du Lac Commonwealth 7/23/1934; Oshkosh Northwestern 8/7/1934).
any Brothertown entity. The Narragansett greeting is insufficient to demonstrate the identification of an Indian entity in 1934. The Brothertown reply to this greeting, mentioned in the petitioner’s presentation, constitutes self-identification rather than identification by an outside observer (Hayne 1935, 147, prints the reply).

The writings of scholars and amateur historians during the second quarter of the 20th century in the record for this case consist of only two manuscripts about Brothertown history. Brothertown Indians were not mentioned in a third manuscript, an article on the “Indians of Wisconsin” in the Wisconsin Blue Book of 1931 (Kirsch 1931). Coe Hayne prepared the first manuscript on Brothertown history in 1934 at the time of the Baptist centennial and published it the next year in a condensed version in a religious journal (Hayne 1934, 1935; BIN 2005, 21; 2008, 17). Hayne mentioned that an old Brothertown record book was kept by Lura Fowler Kindness in the attic of her home in Wisconsin. He referred to “her people, the Brothertown Indians of Wisconsin,” but added that she was “one of the last of her tribe” and that “very few representatives of the group are to be found in Calumet County today” (Hayne 1934, 5, 6). Hayne did not mention these few individuals as a remnant group of the Brothertown, for he noted the passage of the Act of 1839 and concluded that “[d]uring the subsequent one hundred years they gradually lost their identity as a people” (Hayne 1934, 6; 1935, 146). This statement declined to identify a contemporary Indian entity. The journal that published Hayne’s article introduced it with the note that this was the story “of a vanished tribe of Indians” (Hayne 1935, 144).

The other manuscript written by an amateur historian during the 1930s was a historical synopsis prepared by local resident Otto Heller. The petitioner’s presentation for this criterion says that Heller gave a speech at the Baptist centennial of 1934, but does not describe the speech or expressly claim it as an identification of a Brothertown group (BIN 2005, 21). No copy of the speech has been submitted for the record. Heller in 1936 produced a map of the first homes on the Brothertown reservation in Wisconsin, which was acquired for the record by OFA researchers (Heller 1936). A manuscript by Heller in the record is a sketch, dated 1937, of the history of Brothertown Indians from 1743 to 1852 (Heller 1937). A Heller manuscript transcribed by the petitioner, which it dates as 1951, is a historical account of the Brothertown that ends in 1856 (Heller 1951). Heller’s historical research and writing did not describe a contemporary Brothertown group. However, Heller ended his 1937 manuscript with the comment that “today all that remains of this tribe in Brothertown are eighteen souls and . . . in a few more years the Brothertown Indians will be but a memory” (Heller 1937, 7). Heller’s remark in 1937 is an identification of an Indian entity that was a contemporary remnant of a historical Indian tribe.

The petitioner’s presentation for this criterion for the period from the late 1930s to the late 1960s consists of a general narrative that alludes to some social events or social changes without expressly offering a specific identification of the petitioning group. The petitioner mentions funerals from 1839 to 1968, World War II service or work, and relocations to the Stockbridge Indian reservation, and asserts that its members maintained contact with each other, but activities by group members do not demonstrate identification of a group by outsiders (BIN 1996, 98; 2005, 22-24, 29). A 1942 obituary for a “former Brothertown woman” referred to Brothertown as a geographical place, stating she “was born in Brothertown” and making no reference to her Indian ancestry (Chilton Times 12/24/1942; BIN 2005, 24 and n.99). A Brothertown column in
the local newspaper until 1950 reported news from a geographical place and the petitioner provides no example of its identification of a contemporary Indian group (BIN 2008, 16). A petition to the Indian Claims Commission in 1950 constitutes self-identification and was filed for a group calling itself the “Emigrant New York Indians” that was larger than Brothertown descendants (BIN 2005, 24). An account in 1955 of a former Indian baseball team is not an identification of an entity that satisfies the requirements of this criterion (BIN 2008, 11).

The publications of scholars and the State of Wisconsin during the period from 1950 to 1975 do not identify a contemporary Brothertown Indian entity. The petitioner’s presentation for this criterion does not cite any such scholarly works during this period. A Handbook on Wisconsin Indians published by the Wisconsin State government in 1952 and 1966 does not list the Brothertown Indians in its table of contents of Wisconsin tribes and does not appear to mention the Brothertown in its text (Wisconsin 1952, 1966). A Bibliography of the Indians of Wisconsin published by a scholar in 1965 contains no section on the Brothertown Indians (Fay 1965). A brief scholarly survey of Wisconsin Indians published in 1969, and revised in 1980, does not list the Brothertown Indians in its table of contents or its map of “Wisconsin Indians” and does not discuss them in its text (Lurie 1969, 1980). Its only reference to the Brothertown is to include the Brothertown reservation of 1831 in its map of “Indian Land Cession.” An article on the “Indians of Wisconsin” in the Wisconsin Blue Book in 1975 mentions the Brothertown only as having received land in 1831 and does not include the Brothertown in its discussion of current Indians of the State or in its bibliography (W. Hodge 1975). None of these publications provides any identification of a Brothertown Indian entity contemporaneous with the date of publication.

The petitioner notes that Brothertown Indians received a share of the claims award to Emigrant New York Indians made by the Indian Claims Commission and distributed as provided by Congress in an Act of September 27, 1967 (BIN 1996, 95, 97; 2005, 25, 28). That Act defined the beneficiaries of the award as the Oneida Indian tribe, the Stockbridge-Munsee Indian tribe, and individuals of Brothertown descent who had “at least one-fourth degree Emigrant New York Indian blood” and were not members of either of the two federally recognized tribes named in the Act (U.S. Congress 9/27/1967). The petitioner claims that tribes made membership lists for the purpose of receiving judgment funds (BIN 1996, 95; 2005, 25). This was true of the two federally recognized tribes, but Brothertown descendants were required to submit individual applications. The Bureau of Indian Affairs prepared an enrollment of those applicants who met the eligibility requirements of the Act and had applied by the regulatory deadline (Interior 11/16/1967; BIN 2005, 26). The Government made payments to these Brothertown individuals. The Indian Claims Commission awarded a judgment to historical Indian tribes that existed in the 1820s and 1830s. Congress in 1967 did not identify a contemporary Brothertown Indian entity for the purpose of receiving a share of this award to historical tribes.

The petitioner’s presentation for this criterion mentions five newspaper articles between 1967 and 1972 about the claims award process without expressly explaining how they identified the petitioning group (BIN 2005, 26-27; 2008, 11). The local Fond du Lac newspaper reported most accurately on the claims payment issue, while the two articles submitted from newspapers in Sheboygan and Milwaukee were very brief and poorly informed. The local newspaper talked to BIA officials in the State and local attorney Robert Fowler, a Brothertown descendant. The Fond du Lac Commonwealth consistently referred to “descendants of Brothertown Indians” or
“descendents” of the Brothertown tribe as the recipients of claims award payments (Fond du Lac Commonwealth 11/21/1967, 4/30/1968, 3/3/1972; BIN 2005, 26-27). It also reported that “descendents of the Brothertown community now reside in Fond du Lac” (Fond du Lac Commonwealth 11/21/1967). This newspaper referred to Indian individuals as current residents of the area, but did not identify a contemporary Indian entity.

The Sheboygan Press in 1967 quoted Senator Gaylord Nelson of Wisconsin as referring to the Brothertown, without actually naming the Brothertown in the quoted passage and while inaccurately describing their ancestry, as one of the “tribes, whose members are descendants of the New York Iroquois Indians,” that would receive the claims award. This language implied a Brothertown tribe existed in the present even though Nelson’s bill to distribute the judgment funds treated the Brothertown differently from federally recognized tribes (Sheboygan Press 9/15/1967; BIN 2008, 11). The Act of 1967 did not require the members of two federally recognized tribes to submit application forms, but the Milwaukee Journal in 1967 stated that “members of three Wisconsin Indian tribes” had to apply for an award payment, and named the “Brotherton” as one of those tribes (Milwaukee Journal 11/16/1967; BIN 2005, 26). Both newspapers confused an award to historical tribes with payments to their modern successors or heirs. By referring to Brothertown in the present tense as a contemporary tribe with current members, these two brief newspaper articles identified a contemporary Brothertown Indian entity in 1967.

For the decade of the 1970s, the petitioner’s presentation for this criterion refers to family reunions and visits by Brothertown Indians to Narragansett Indians at an unstated date and to Montauk Indians in 1978 (BIN 2005, 24; 2008, 11, 15) Activities of individual members of the petitioning group do not demonstrate identification of the group by outside observers. The petitioner’s presentation does not cite documents or provide an explanation to show that external observers identified any entity. The petitioner also mentions a visit to Wisconsin by John Hamilton of New London, Connecticut, to seek support for a land claim against the State of Connecticut. A newspaper article reported that Hamilton called for “Brothertown, Stockbridge, [and] Munsee Indians” to attend a meeting, but did not identify a contemporary Brothertown organization or entity (Appleton Post 9/-/1977). The petitioner also notes a statement, made in a letter in 2006, that two individuals received American Indian tuition waivers to attend the University of Minnesota at Morris during the 1970s (M. Miller 5/24/2006; BIN 2008, 4). That letter did not describe those students as Brothertown Indians or relate their tuition waivers in any way to the existence of a Brothertown Indian entity in the 1970s.

The petitioning group has been identified since 1981 as an Indian entity on a substantially continuous basis by a variety of external observers. Soon after the petitioner formed its current organization, an Indian organization and the State government identified the petitioning group. In 1981 the Great Lakes Inter-Tribal Council’s education committee published a new policy manual that offered membership in that organization to a Brothertown group, listing the “Brotherton Area” as one of the “communities or groups” that “shall have the option of declaring membership” with the committee to represent the “Brotherton” tribe (GLITC 1/-/1981; BIN 2008, 12). Whether or not the petitioning group accepted this offer of membership, this Indian organization identified a contemporary Brothertown Indian entity. In 1982 the Wisconsin State legislature issued a “citation” to “congratulate the Brotherton Indians on their 150th Anniversary
Celebration” and stated that “in 1982 the Brotherton Nation” included various professional and business people “in the tribe” (Wisconsin 4/7/1982; BIN 2008, 5). This citation identified a contemporary Indian entity and linked it to a historical Indian tribe. Governor Lee Sherman Dreyfus also issued an executive proclamation in 1982 that referred to “the Brotherton Nation” as existing “today” and to its 150th anniversary in Wisconsin (Dreyfus 11/8/1982; BIN 2008, 5).

Area newspapers identified the petitioner’s organization by reporting on its activities.8 In 1981, a newspaper identified the “Brothertown Indian Nation” as “a Wisconsin Indian tribe” and said the “tribe” was in the process of applying for federally recognized status (Fond du Lac Commonwealth 6/21/1981). A number of newspapers reported on the petitioning group’s 150th anniversary celebration activities during 1982 and identified the petitioner as the “Brotherton Indian Nation” or “Brotherton Nation” and as a “tribe” or “nation” or “community” (Milwaukee Journal 6/9/1982 and 11/9/1982; Appleton Post-Crescent 7/17/1982; Fond du Lac Commonwealth 7/18/1982). Newspapers identified the petitioner in 1984 as the “Brotherton Indian Tribe” or “Brotherton Indian Nation Inc.” and as a “tribe” that received a grant or deposited its historical materials in a local college library (Appleton Post-Crescent 10/21/1984; Oshkosh Northwestern 11/11/1984). They identified the petitioner in 1985 by reporting the “Brotherton Indian Tribe” had given a reward to a researcher for “the tribe” (Racine Journal Times 11/2/1985), in 1986 by reporting on “the Brotherton tribe’s quest” for tribal recognition (Appleton Post-Crescent 5/31/1986), and in 1987 by saying that members of the “Brothertown Indian tribe” had attended a “tribal reunion and picnic” (Sheboygan Press 7/22/1987).

The Oneida Tribe of Indians stated in 1983 that “the Brotherton Tribe . . . has in recent years been working toward regaining their federal recognition” and adopted a resolution to support those efforts (Oneida Tribe 5/6/1983; BIN 2008, 13). The Oneida resolution identified a contemporary Indian entity. It linked the contemporary group to a previously acknowledged tribe and to a historical tribe that had a relationship with the Oneida “dating back to 1788.” The Stockbridge-Munsee Community approved an almost identical resolution in 1985 (Stockbridge-Munsee Community 8/20/1985; BIN 2008, 13). The Oneida Tribe adopted another resolution in 1992 that asserted “the Brothertown Indian Nation is a tribe of American Indians” that “has existed . . . since time immemorial to the present day” and “is governed by a Tribal Council” (Oneida Tribe 5/7/1992). This resolution identified the petitioner by name as a contemporary Indian entity. It expressly linked the petitioner to a historical tribe previously recognized by treaties. An undated statement of the American Indian Chamber of Commerce of Wisconsin said it awarded its first scholarships to Indian students in 1996 and named the petitioner’s organization as existing at that time (AICCW n.d.; BIN 2008, 4).

The petitioner contends the State of Wisconsin invited it to participate in the State’s sesquicentennial celebration in 1998, but without citing supporting evidence (BIN 2008, 12). A newspaper article in the record suggests it was the sesquicentennial committee of the town of Brandon, west of Fond du Lac, that “contacted the Brotherton Indian nation . . . to participate in the local event” (Waupun News Daily 1/19/1998). This article identified the petitioning group as a contemporary Indian entity. A Minnesota newspaper reporting on a meeting the petitioner held

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8 The petitioner asserts it has been identified by various newspapers, but does not give any specific examples, specific citations, or specific dates (BIN 2008, 16).
in that state at Little Falls in 1998 identified the petitioning group by name as a contemporary Indian entity (Morrison County Record 5/3/1998). By telling the petitioner’s version of its history, it linked the contemporary group to the previously acknowledged historical tribe. In 1999 the State Historical Society of Wisconsin approved a “historical marker” applied for by the petitioning group. This highway marker includes historical text about the Brothertown Indians and concludes with the sentence, written by the petitioner but accepted by the State, that: “Today, the Brothertown remain a culturally distinct Indian community of about 2,400” (Wisconsin 1999; McBride 2/16/1999; Ezold 4/18/1998; BIN 2008, 6). The State’s historical marker erected in 1999 identified a contemporary Indian entity.

In addition to evidence that demonstrates the identification of the petitioning group, the petitioner’s presentation for this criterion mentions various activities of individuals without citing supporting evidence to show how they demonstrate identification of the petitioning group by an external observer. The available evidence does not demonstrate that individuals received scholarships because of their membership in the petitioner’s organization, although this may be the case (BIN 2008, 4). The petitioner refers to an invitation to participate in an inter-tribal powwow in 1998, but the only document that appears to refer to such an event does not name a Brothertown group as a participant (Milwaukee Journal 3/15/1998; BIN 2008, 12). The activities of individual members of the petitioning group in visiting members of New England tribes, making presentations on Brothertown history, or demonstrating traditional crafts are not external identifications of the petitioning group (BIN 2008, 11, 15, 24). Two newspaper articles the petitioner cites as reporting on such activities in 2006 may identify the petitioning group, but they do not appear to have been submitted for the record (BIN 2008, 24 n.28). The petitioner asserts it has been recognized by the seven ancestral tribes from which the Brothertown Indians evolved, but does not cite evidence to support this contention (BIN 2004, 14).

Almost all of the recent scholarly literature cited by the petitioner relates to the history of the Brothertown prior to 1839 and has already been discussed (BIN 2008, 18-23). Other scholarly work of the period since 1975 that is not cited explicitly by the petitioner also deals only with the historical tribe (Mason 1988; Jarvis 2003). One manuscript submitted by the petitioner, however, suggests that the Brothertown are only an “imagined” tribe (Hutchins 2005). The petitioner often refers to a study of the Indians of New York, primarily in the 20th century, but does not expressly claim it as an identification of the petitioning group. That study’s index does not include the “Brothertown” (Upton 1980, 241). The petitioner suggests that a recently published anthology includes the Brothertown as one of Wisconsin’s “current” bands or tribes, which would constitute an identification of the contemporary group (Tigerman 2003; BIN 2008, 18). The submitted excerpt of this publication does not use such language, but the anthology’s inclusion of the petitioner’s description of itself implies the editor adopts that position. In a historical survey of the Indian Nations of Wisconsin, published in 2001, author Patty Loew says that a “Brothertown Tribal Council” holds monthly meetings and refers to it as a “tribe” with “tribal members,” thus identifying a contemporary Indian entity (Loew 2001, 124).

The contemporary petitioning group has been identified as an Indian entity by letters of support it has gathered in recent years (BIN 2008, 6-9, 14). These letters of support were provided the petitioner by the Governor, Secretary of State, and Attorney General of Wisconsin; members of the United States Congress from Wisconsin; members of the Wisconsin State legislature; the city
manager of Fond du Lac, Wisconsin; and federally recognized Indian tribes of Wisconsin
(LaFollette 8/1/2005; Petri 9/12/2005; Doyle 10/10/2005; Breske 11/2/2005; Menominee Tribe
Danforth 2/22/2006). For example, Governor Jim Doyle wrote in 2005 to provide “support for
the Brothertown Indian Nation’s petition for acknowledgment by the federal government.” The
governor identified the petitioner as a “vibrant nation today” and implied the petitioner is the
same group as the historical tribe by referring to its “important role in the history of the State of
Wisconsin” (Doyle 10/10/2005). The chairman of the Oneida Tribe reaffirmed the tribe’s
support for Federal acknowledgment of the Brothertown petitioner and linked it to the historical
treaties of the Brothertown tribe (Danforth 2/22/2006). These letters and tribal resolutions dated
2005 and 2006 demonstrate the identification of the petitioner as an Indian entity at that time.

Conclusion

The petitioning group has been identified as an American Indian entity on a substantially
continuous basis since 1981. In addition, external observers identified a historical Brothertown
group on a substantially continuous basis from 1839 until 1855. Between 1855 and 1981,
outside observers periodically identified a Brothertown Indian entity. Most of these periodic
identifications and most of those made since 1981 linked the contemporary group being
identified to the previously acknowledged historical tribe, thus meeting an additional
requirement for this criterion added by section 83.8(d)(1). Because the periodic identifications
between 1855 and 1981—in 1875, 1878, 1901, 1902, 1903, 1937, and 1967—are separated by
long periods of time in which the petitioner or its members’ ancestors were not identified as an
Indian entity, the petitioner does not satisfy the standard of “substantially continuous”
identification stated in this criterion. Therefore, the petitioner does not meet the requirements of
criterion 83.7(a) as modified by section 83.8(d)(1) since 1839, the last date of Federal
acknowledgment. Alternatively under section 83.8(d)(5), the petitioner does not meet the
requirements of criterion 83.7(a) since 1839.
Criterion 83.7(b)

83.7(b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.

83.8(d)(2) The group meets the requirements of the criterion in §83.7 to demonstrate that it comprises a distinct community at present. However, it need not provide evidence to demonstrate existence as a community historically.

Introduction

The evaluation under this criterion is modified for petitioners with previous Federal acknowledgment as an Indian tribe. Previously acknowledged petitioners are not required to demonstrate their existence as a historical community. Section 83.8(d)(2) provides that they must demonstrate only that a predominant portion of the petitioning group comprises a distinct community “at present.” Section 83.1 defines “community” as “…any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers. Community must be understood in the context of the history, geography, culture and social organization of the group.” The definition of “at present” varies for groups evaluated under section 83.8(d)(2), as each case requires researchers to define a period tailored to each petitioner’s unique history. The Brothertown Indian Nation (BIN) petitioner formally organized in 1980, and this event establishes a meaningful starting date for a contemporary period for evaluation. For this case, “at present” is considered to be the period from 1980 to 2009. Therefore, the petitioner needs to meet the requirements of criterion 83.7(b), as modified by section 83.8(d)(2), from 1980 to 2009.

Evidence relating to earlier historical periods is described here for several reasons, including the awareness that any proposed finding of previous Federal acknowledgment is preliminary. First, an evaluation of a possible community at present depends upon some knowledge of how such a community may have been formed or have continued from what went before. Second, a discussion of historical settlement and historical social relationships helps provide context for a required discussion of historical political influence under criterion 83.7(c). Third, the acknowledgment regulations provide that a petitioner will be considered to have provided evidence sufficient to meet criterion 83.7(c) for a given time period if it meets the requirements of section 83.7(b)(2) for that period. Thus, the discussion of this criterion describes historical evidence and asks whether historical evidence demonstrates the petitioning group meets the requirements of section 83.7(b)(2) historically.
At the time of the Act of 1839 the Brothertown Indians of Wisconsin had a reservation for their exclusive use. After the land of the reservation was allotted to tribal members, the exclusiveness of the former reserve was quickly lost. Non-Indian settlers arrived in the area and bought lands that had been allotted to Brothertown Indians. In less than 20 years Brothertown descendants became a minority of the population of the former reservation that became first Manchester Township and then Brothertown Township of Calumet County. The 1900 Federal census showed that Brothertown descendants composed only about one-tenth of the population of Brothertown Township, and after 1900 fewer and fewer Brothertown descendants remained in the township. From the 1930s to the mid 1960s, there is little evidence that the members who moved outside of Brothertown Township associated with each other as Brothertown descendants, and only sporadic examples of the few descendants still living in Brothertown associating with each other. After a 1967 claims award to the New York Emigrant Indians, there is little evidence in the record that individual Brothertown descendants associated with each other for any purpose other than the filing of claims applications.

In 1980, a small number of descendants formed the “Brothertown Indians of Wisconsin” and began the process of petitioning for Federal acknowledgment as an Indian tribe. The evidence in the record describes some activities of its organization since 1981, and indicates that the group is highly dispersed. The evidence in the record indicates that most interaction among members is related to the expansion of the formal organization. Few members have strong social ties to other members, and those who do have them often formed these relationships through the formal activities of the group. These relationships have not been consistent throughout the 29-year period that defines “at present” under the criterion. The petitioner’s narrative does not indicate that a predominant portion of its members constitute a distinct community “at present.” All of the combined evidence presented by the petitioner does not indicate that that a predominant portion of the members constitute a distinct community. Because the petitioner does not satisfy the requirements of this criterion for the period “at present,” it does not meet criterion 83.7(b) as modified by section 83.8(d)(2).

The petitioner’s presentation for this criterion since 1839 is found in three narratives submitted in 1996, 2005, and 2008 (BIN 1996, 101-115; 2005, 60-99; 2008, 25-46). The petition record also includes additional information submitted by the petitioner and collected by OFA. This information includes, but is not limited to, Federal and State documents, sign-in sheets, newsletters, and interviews. The petitioner describes the movement of the Brothertown population away from the former Brothertown Indian reservation, mentions certain political activities involving claims cases, says that annual homecomings occurred between the late 1890s and mid-1930s, quotes a personal diary for the years 1917-1923 and a 1934 letter, cites family reunions over the last several decades and some activities of its organization since 1981, and notes statements of support from public officials and federally recognized tribes. It provides almost no discussion of group social activities between the 1920s and 1970s. The petitioner’s narrative tends to assert that social contact and interaction occurred historically among members of the petitioning group rather than providing examples or citing sources that demonstrate that such social interaction took place. The petitioner’s narrative offers little explanation of evidence to demonstrate that a predominant portion of its members constitute a distinct community. The evidence in the record relating to the events mentioned by the petitioner is discussed in the following sections.
Brothertown Indian Nation (Petitioner #67) Proposed Finding
Criterion 83.7(b)

Historical Settlement of Brothertown Indians in Wisconsin

The Brothertown migration to Wisconsin began in 1831 according to William DeLoss Love in his 1899 book Samson Occum and the Christian Indians of New England. In 1831, Love said, a group of six families consisting of “nearly forty persons” migrated from Brothertown, New York, to Green Bay, where they settled temporarily along the Fox River (Love 1899, 324-325). He noted that the group was composed predominantly of the large families of William Dick, Elkanah Dick, and Randal Abner. The United States Senate added a proviso to the Treaty of February 8, 1831, with the Menominee that granted the Brothertown a reservation south of Green Bay on the east shore of Lake Winnebago and, according to Love, after the treaty was ratified they moved to that location in 1832. Love’s genealogical notes on Brothertown families included in the petitioner’s genealogical database identify another five families who arrived in 1832 and were allotted in 1839 (Love 1899, appendix). The petitioner’s narrative names an additional five families and four individuals who arrived in 1832 (BIN 1996, 68-69; 2005, 55-56). An obituary in the local newspaper claimed that another individual settled in 1832 at Brothertown (Chilton Times 6/15/1887). This combined evidence identifies perhaps 21 founding families on the Brothertown reserve.9

Migration to the new reservation continued after 1832 and the available evidence reveals that a Brothertown settlement in Wisconsin was still in the process of being established at the time the 1839 Allotment List was made. The petitioner identifies 34 families or individuals who arrived in Wisconsin in the years from 1834 to 1839 (BIN 1996, 68-69; 2005, 55-56). However, the genealogical notes in Love’s 1899 book indicate that one of these families arrived in 1843.10 The petitioner’s genealogical database contains notes that identify another five families or individuals who arrived in Wisconsin before 1839 (Love 1899, appendix; Chilton Times 6/30/1885). A number of the household heads identified by the petitioner died before 1839, but some had widows who were allotted. Another five of these family heads not known to have died before 1839 were not included on the 1839 Allotment List. A date of migration cannot be determined for many of the adults on the 1839 Allotment List, so more families may have participated in the original settlement of the reserve and more families than those identified in these sources arrived in the years between 1832 and 1839. This pattern of continuing Brothertown migration from New York to Wisconsin posed a problem for the commissioners making the allotment list in 1839, as they expected more Brothertown families and individuals to arrive after 1839.

A local resident and amateur historian, Otto Heller, gathered evidence about the location of the earliest homes established by Indians on the Brothertown reservation. In 1936, Heller drew a

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10 The petitioner does not cite its sources for the dates it gives for migration to Wisconsin, but citations to Love’s book and an obituary in the petitioner’s genealogical database provide supporting evidence for 12 of the other 33 families it names (Love 1899, appendix; Chilton Times 8/1/1891).
map of the historical information he had collected (Heller 1936). In many cases he also supplied a date of settlement by these individuals in these locations. These settlement dates have been extracted from his map by OFA researchers and arranged chronologically (see Appendix A). The first Brothertown families settled the Brothertown reservation in 1832, according to Heller’s data. In that year, three Dick families established homes near where Mill Creek flows into the lake. The village now known as Brothertown developed in this area. Heller’s evidence indicates that at least seven Brothertown families settled the reserve in 1832 and ten more families arrived in 1834. His map identifies the location of at least 30 homes established on the reserve through 1839. Most of these homes were located along either Baseline Road, surveyed in 1834, or Military Road, established just to the east of Baseline Road in 1836 (see Figure 2). Almost all this settlement before 1840 occurred in roughly the western sixth of the reserve, in what would become the three ranges of allotments closest to the lake.

The 1839 Allotment List of 1839 made 390 assignments of land, including more than one assignment to a few individuals (see Appendix B).11 In making the 1839 Allotment List, the commissioners relied upon an earlier partial allotment of the land of the reserve and claimed they preserved all existing buildings and cultivated lands for their owners in the new list of allotments (Anthony et al. 10/-/1839). A comparison of the map of the allotments and Heller’s map of first homes shows many individuals in comparable locations, while some discrepancies indicate Heller did not assemble his map by simply matching settlers to their allotments (Featherstonhaugh 1840; Heller 1936). A result consistent with a practice of allotting lands to existing settlers was that the commissioners assigned no lots of land along Military Road or Baseline Road, the location of earliest settlement, to minors. There was a discernable pattern related to the age of the allottees in the distribution of lots in 1839. The age of allottees is not known for more than one-quarter of these individuals and the age of others is based only on approximate estimates. Despite these problems, the available data suggest that less than 10 percent of allottees in the western quarter of the reserve were minors, about 50 percent of allottees in the middle half of the reserve were minors, and more than 75 percent of allottees in the eastern quarter of the reserve were minors.

The Brothertown commissioners in 1839 made allotments to people who were “not resident and actual settlers” in Wisconsin (Anthony et al. 10/-/1839).12 They recognized that more Brothertown families in New York intended to migrate to Wisconsin, and they made an effort to include them on the 1839 list. As the commissioners explained in a supplemental report to the General Land Office in 1845, before “we could make a just and equitable division” of Brothertown lands in Wisconsin in 1839, “it was necessary that we should have a list of those [Brothertown Indians] who resided in the State of New York” (Anthony et al. 7/10/1845). The “list at length came,” they said, and they assigned land on the basis of that list. However, it is

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11 The report of 1839, amendatory reports of 1845, and map of 1840 identify 387 member allottees at the time of the allotment. The commissioners made 390 allotments in their 1839 report, but 5 appear to represent a second assignment made to one individual and 1 was made to unnamed children, which reduces the total to 384 identified allottees, while the map identified 2 wives not listed in the 1839 report and an 1845 report identified 1 additional wife, which increases the total to 387 allottees identified by the commissioners. The petitioner says that 378 members were allotted (BIN 1996, 73; 2005, 62).

12 Just prior to the allotment to 387 individuals, a territorial newspaper estimated the Brothertown population to be 216 (Wisconsin Enquirer 6/15/1839).
not clear they made allotments to everyone on the list. The commissioners offered this explanation to the General Land Office in an attempt to return a patent issued to John Kiness and have it reissued to John Coyhis Sr. Kiness was on the list of the Brothertown in New York, but the commissioners said they later learned he lived in Connecticut and did not belong to the tribe. On the other hand, individuals who had arrived but then left the Brothertown reserve in Wisconsin were not allotted. The commissioners acknowledged Coyhis had not been allotted in 1839 because he had “abandoned the nation” and moved away from the reserve, only to return later.

At least some individuals on the 1839 Allotment List were identified in Love’s genealogical notes as New York residents at that time. Asa Dick (b.1795) was described by Love as “the most prominent man” in the town of Dickville, New York, the last Brothertown “peacemaker,” and a man who “bought the lots of many Indians who wished to emigrate to Wisconsin” before he died in New York in 1843 (Love 1899, 343). Both he (#178) and his wife (#332) were on the 1839 Allotment List. His brother Isaac Dick (b.1804), Love said, held several town offices in New York and moved to Wisconsin in 1843 (Love 1899, 343). Both he (#317) and his wife (#161) were on the 1839 list. Cynthia Dick, the widowed mother of Asa and Isaac Dick, was on the 1839 list (#167), as well as three of her daughters (#72, #202, #277), but Love’s notes do not give a date of their migration to Wisconsin or indicate that they actually relocated. Love did not give a migration date for John Dick (b.1808), son of Paul Dick aka Paul Richards, but said that he sold his New York lot in 1841 and served as a peacemaker “until the tribe had nearly all emigrated, when he followed them” (Love 1899, 344). This implies that John Dick also was on the 1839 list (#146) while still a resident of New York. The petitioner says about 50 Brothertown arrived in Wisconsin after 1841 (BIN 1996, 69).

The commissioners’ report in 1839 stated that women who had married outside the tribe were not allotted land. A social community of allottees and their close kin in Wisconsin would therefore have been larger than the 1839 Allotment List. The petitioner’s genealogical database identifies clearly only one daughter of an 1839 member who married an outsider, came to Wisconsin, and was not included on the allotment list. Two other adult daughters possibly left off the 1839 list might fall into this category, but neither has a known pre-1839 marriage. Another three daughters of 1839 members were on the 1839 list even though they had children by non-members. These women were either married to a member or not married to a non-member at the time of the allotment. They were included on the allotment list, but their children by non-members were not. Perhaps a number of married daughters still residing in New

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13 Nancy (Johnson) Schooner (b.1814), daughter of allottees #40 and #70 (William Johnson and Charlotte (Skeesuck) Johnson), was omitted from the 1839 list, as were her three children born before 1839.

14 Lucy Paul (b.1810), daughter of allottee #32, and Serepta Crosley (b.1815), daughter of allottee #1. However, Serepta Crosley is likely on the 1839 list as Serepta Wauby.

15 Elizabeth (Mathews) O’Brien/Shelley (b.1797), allottee #122, had married a non-member prior to 1825, but was married to a member at the time of the 1839 allotment. Lucy (Skeesuck) Hart/Welch (b.1816), allottee #182, apparently had children by a non-member prior to 1839 but did not marry him until after the allotment list was made. Lucinda (Brushel) Welch (b.1816), allottee #214, had children by a non-member prior to 1839 but may not have married him until having moved to Wisconsin after 1839.
York were excluded from the 1839 list. The emphasis given to this issue in the commissioners’ report implies that more women were affected by this membership policy.

Some of these women may have been identified by Special Agent Guion Miller in making a claims roll in 1901. Miller “added” to the 1839 Allotment List the names of individuals he found on an older allotment roll in the tribe’s “Town Book” of records (Miller 9/3/1903). This roll might have been an 1834 allotment list or a preliminary 1839 Allotment List filed with the Town Clerk for inspection and appeal as required by the Act of 1839. These names added by Miller were individuals on an earlier roll left off or deleted from the final 1839 Allotment List submitted to the President. Even though they were not allotted as members of the tribe in 1839, it appears Miller added these names as ancestors from whom Brothertown descent could be claimed in 1901. Miller added 36 names. At least 10 of these people appear on the 1839 list, 2 are likely on the 1840 map, and 2 others may be on the 1839 list, so Miller identified at least 22 additional Brothertown ancestors. Nineteen of these people, and possibly all 22 of them, do not appear in the petitioner’s genealogical database. At least 12, and perhaps 16, of these additional ancestors are women, and they may be women who married outside the tribe and therefore were excluded from the 1839 Allotment List.16

Two alternate views of membership in the Brothertown group after 1839 derive from the group’s historical reliance on patrilineal descent to limit its membership and distribution of reservation land, thus excluding those women who had grown up as Brothertown members but later married non-Brothertown men. This proposed finding tracks both lineal Brothertown descendants who were acknowledged as members according to the rules regarding patrilineal descent and those people who descend from Brothertown women who married non-Brothertown men. These latter descendants are described by the contemporary petitioner as members, but do not appear to have been considered members by the group during the 19th century. It is important to discuss these ancestors of the contemporary petitioner and consider how these ancestors may have interacted with each other. This proposed finding considers both historical Brothertown rules of membership and the contemporary petitioner’s view of its membership.

The Brothertown Indians, 1839-1904

Residential Analysis under Section 83.8(b)(2)(i)

Section 83.7(b)(2)(i) asks whether “[m]ore than 50 percent” of the petitioner’s members lived in an area composed “exclusively or almost exclusively” of members of the petitioning group.17 The petitioner did not include a historical residency analysis as part of its petition submission. OFA researchers examined several Federal, State, and territorial censuses for the period after 1839 to evaluate whether the petitioning group met the requirements of this section and, if so, for

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16 Mary Ann [Marietta?] Abner, Susan Anthony, Nancy Broder, Olive Brushel, Jane Brushel, Caroline Fowler, Elizabeth Johnson, Mary Johnson, Laura Mathers, Mary Mathers, Emily Samson, and Nancy [Walkieth].

17 If these two conditions are met, section 83.7(b)(2)(i) additionally requires a demonstration that the “balance of the group” outside the almost exclusive area maintained “consistent interaction” with some members of the majority residing in the almost exclusive area.
how long. At the time of the Act of 1839 the Brothertown Indian Reservation was an area consisting almost exclusively of Brothertown Indians, and the 1840 Federal census confirms that such a residential pattern existed immediately after the allotment to individuals of reservation lands. The 1840 Federal census and territorial censuses of the 1840s named only the heads of families, which makes it impossible to account accurately for the residential locations of all 1839 Brothertown members. The Federal census in 1850 and following years, however, listed all household residents. Federal census schedules reveal the persistence through the 19th century of an area of Brothertown settlement, but an area that gradually declined in size and concentration of Brothertown descendants.

Randal Abner Sr., one of the 1839 Brothertown commissioners, served as enumerator of the 1840 Federal census of Calumet County. The census did not designate any specific townships or districts within the county (U.S. Census 1840, Calumet County). In 1840 Calumet County consisted of more than the former Brothertown Indian Reservation. It included areas of non-Indian settlement but did not include the Stockbridge Indian Reservation, as the 1840 census excluded “Indians not taxed.” The census offered the enumerator only three descriptive racial categories to identify the “color and condition” of the residents: “free white persons,” “free colored persons,” or “slaves.” Given this choice, Abner identified all the Brothertown allottees as “free white persons.” Two non-Indian family heads residing in the settlement married Brothertown women who were disqualified from receiving an allotment by their marriage to a non-Indian. One non-Indian family head residing in the settlement eventually married a Brothertown allottee. A few such families or individuals resided among the Brothertown allottees, but otherwise the Brothertown members were enumerated in sequential households, indicating that they were in close physical proximity to each other.

The 1840 Federal census of Calumet County enumerated 68 families, 50 of which were headed by a Brothertown Indian allotted in 1839 (U.S. Census 1840, Calumet County). OFA researchers compiled a list of all the households on the 1840 census (see Appendix C). The families of Brothertown allottees constituted 77 percent (213 of 275) of the 1840 population of Calumet County. This census did not identify spouses or children by name. The presence of a spouse can be deduced from comparable ages on the census and the identity of a spouse can be presumed from information in other sources. It is not possible to identify all resident allottees in 1840 given this absence of specific names, but a portion of adult Brothertown allottees in 1839 are not enumerated on the 1840 census. The 11 consecutive non-Brothertown families on this census may represent non-Indian settlers outside the former Brothertown Indian Reservation. If this is the case, then Brothertown allottees headed 50 of 57 families in the township consisting of the former reserve, or more than seven-eighths of all families, indicating this area of the county consisted almost exclusively of Brothertown Indians in 1840.

In the years after 1840, the exclusiveness of the former Brothertown Indian Reservation rapidly disappeared. Thomas Commuck, a former Brothertown commissioner, noted in 1851 that “a

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18 The name of the contemporary group is the “Stockbridge-Munsee Community Band of Mohican Indians.” Historically, the group has been referred to by a number of names, including “Stockbridge” and “Stockbridge-Munsee.” Many contemporary members refer to themselves as “Mohicans.” In this text, the contemporary group will be referred to as “Stockbridge Mohicans.”
constant tide of emigration setting [sic] into our county” had recently begun (Commuck 1851, 106). He contrasted the situation in 1840, when only a few non-Indians resided in the county, with that in 1850, when he estimated Brothertown Indians made up 400 of the county’s 1,746 residents. A superintendent of the Office of Indian Affairs, who traveled through the area on visits to the Stockbridge Indians, said in 1854 that “many white men have bought lots and settled among” the Brothertown (Huebschman 9/28/1854). The new settlers after 1840 soon outnumbered the original Indian residents in the county and the township, but a residential area consisting predominantly of Brothertown Indians persisted for a time in the western portion of the township where they had first settled. The issues under section 83.7(b)(2)(i) are whether or not such an area of Brothertown settlement was so extensive as to include more than 50 percent of Brothertown members and was also composed “almost exclusively” of Brothertown Indians.

Some outside observers in the late 1840s and early 1850s referred to the Brothertown residential area as an Indian settlement. For example, an army officer in 1845 mentioned “the Stockbridge and Brotherton Indian Settlements” (McClellan 9/13/1845). The Governor of Wisconsin in 1847 said a township was “occupied” by Brothertown Indians who had become citizens (Dodge 3/26/1847). An Indian Office superintendent in 1854 similarly referred to this Brothertown area as “their township” and to the township as “the home of the Brothertons,” while also noting the presence of “many” non-Indian settlers among them (Huebschman 9/28/1854, 10/1/1855). The Federal census provides information about the residents of the area being identified as a Brothertown area at that time. On the 1850 census schedule a residential area of 117 consecutive dwellings existed in which between two-thirds and three-fourths of the households (81 of 117) included a Brothertown allottee or descendant (U.S. Census 1850, District 36). On the 1860 census schedule, however, no geographical area within Brothertown Township extensive enough to include half of Brothertown descendants can be identified in which the Brothertown constituted even the majority of households (U.S. Census 1860, Brothertown Township).

A Brothertown Indian settlement ceased being composed “almost exclusively” of Brothertown allottees and their children soon after 1840. An almost exclusive Brothertown area did not continue to exist until 1860, as the evidence of the Federal census that year reveals no residential area extensive enough to include half of Brothertown descendants that consisted even mostly of Brothertown Indians. In addition, the evidence in the record suggests outsiders stopped describing a geographical area as an Indian settlement or Brothertown settlement by then. However, a geographical area consisting mostly of Brothertown Indians existed in 1850. The Indian superintendent who identified a Brothertown area in the 1850s also noted the presence of outsiders among the Brothertown, as did the 1850 census. This combination of evidence—showing that an Indian superintendent who visited the area of Brothertown settlement referred to it as containing “many” non-Indian settlers by 1854, and that an area shown on the 1850 Federal census that included most Brothertown allottees was an area in which less than three-fourths of households included a Brothertown allottee or descendant—is considered for this proposed finding to be insufficient to demonstrate that a geographical area composed “almost exclusively” of Brothertown allottees and their children persisted until 1850.19

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19 For the final determination the petitioner may be able to show that a geographical area “almost exclusively” composed of historical members of the petitioning group existed until 1846 or 1847 using the territorial census of Wisconsin in combination with identification of a settlement of the Brothertown or other evidence. The petitioner
An analysis of the 1850 Federal census shows there was a geographical area in Calumet County consisting mostly, but not almost exclusively, of Brothertown households (U.S. Census 1850, District 36). OFA researchers compiled a list of residences of Brothertown descendants in 1850 by consulting the Federal census of 1850 and information in the petitioner’s genealogical database (see Appendix D). In 1850, individuals on the 1839 list of allottees or their children resided in 81 of the first 117 households (81 of 117) enumerated in District 36 by Brothertown allottee Alonzo Dick. About 65 percent (237 of 365) of still-living Brothertown allottees resided within this geographical area. For the purposes of this residential evaluation, a historical population in 1850 may be defined as individuals on the 1839 Allotment List plus their children, parents, and siblings for whom there is evidence they came to Wisconsin. By this definition there were 390 Brothertown allottees or their children born before 1839 who were living in 1850, and 65 percent of them (253 of 390) resided within this geographical area. This evidence that more than 50 percent of historical Brothertown members resided within an area not composed “almost exclusively” of Brothertown Indians does not meet the requirements of section 83.7(b)(2)(i) in 1850.

A geographical area composed mostly of households of Brothertown allottees and their children existed in 1850, but no such area continued to exist in 1860 or 1870 according to Federal census schedules. Based on the identification of the residences of Brothertown allottees or their

would also need to show that more than 50 percent of the historical members of the petitioning group resided within such an area. In addition, section 83.7(b)(2)(i) requires a demonstration that the “balance of the group” outside the almost exclusive area maintained “consistent interaction” with some members of the majority residing in the almost exclusive area. Territorial censuses gave the number of people residing in each household, but identified only the head of the household. The territorial census of 1846, like the Federal census of 1850, shows that what was then Manchester Township was composed mostly, but not exclusively, of households headed by Brothertown allottees (Wisconsin 1846). The petitioners says it can identify 391 Brothertowns in a township population of 576 (68 percent) on the territorial census of 1847 (BIN 1996, 73). It is possible a portion of the township was an almost exclusive area in these years. However, even if it were to be demonstrated that the petitioners meets all the requirements of section 83.7(b)(2)(i) until sometime in the mid-1840s, the evidence transferred to criterion 83.7(c), under the provisions of section 83.7(c)(3), would cover such a brief period of time that it would provide little practical help in meeting the requirements of criterion 83.7(c) since 1839.

Past acknowledgment decisions have assumed that individuals maintain social interaction with their parents, children, and siblings, and that such kin are part of any social community. These individuals have been referred to as “first-degree relatives.” Some parents and adult children of the Brothertown members who migrated to Wisconsin remained in New York and were not included on the 1839 list. Those individuals are not included in this analysis, despite being close kin of the Brothertown in Wisconsin. Women who came to Wisconsin and were married outside the tribe in 1839 are likely included in this analysis as children of allottees.

This analysis of the Brothertown population includes children born before 1839. This analysis does not include 1839 allottees or their children who are known to have died by 1850. Other individuals not found on the census who have no known death date may have died before 1850. No individuals 90 or older are included in this analysis unless found on the census. Better information on death dates may indicate that some people included in this 1850 population were actually deceased in 1850 and that the total of number of people used for this analysis should be somewhat smaller. It is probable that additional children of allottees should be included in this analysis. Since the children of allottees residing at Brothertown and found on the census are more likely known than the children of allottees residing elsewhere and not found on the census, the inclusion of children of allottees in this analysis creates a slight bias in favor of finding residential concentration. This evaluation uses the best information available at the time of this proposed finding.
descendants on the Federal censuses of 1860 and 1870 by the petitioner’s researchers and OFA researchers, there does not appear to be any extensive geographical area within Brothertown Township of Calumet County in those years in which even the majority of households contained a Brothertown allottee or descendant. In both those years, however, the census schedules can be used to identify residential areas of more than 100 consecutive households in which the majority of households contained either a Brothertown descendant or an individual identified as an “Indian” by the census enumerator. These residential areas do not meet the regulatory standard of consisting “almost exclusively” of the petitioner’s members. This census evidence, however, shows some persistence of residential clustering as well as a decline in the geographical concentration of the Brothertown population.

The 1860 Federal census reveals that Brothertown descendants had become a minority of the population of the former reserve, residing in about 63 of the 244 families listed in Brothertown Township (U.S. Census 1860, Brothertown Township). This census was enumerated by non-Brothertown descendant John Marygold. The census form asked that individuals be designated by the descriptive racial categories of “white,” “black,” or “mulatto,” but the enumerator used the notation “ind” to designate “Indian” residents of the county. Marygold identified most of the Brothertown allottees as “Indian,” but he identified some of them as “mulatto” or “white.” His enumeration also identified at least four “Indian” heads of a household with the surname Fowler—two men both named Amos Fowler, an Edward Fowler, and an Eloy Fowler—who lived near known Brothertown descendants also named Fowler, but who were not Brothertown allottees in 1839 and do not appear in the petitioner’s genealogical database. The families of these men may have been late arrivals from New York or non-Brothertown Indians who happened to share the Fowler surname. The census enumerator designated as “Indian” individuals who are not known to be Brothertown descendants. These “Indian” individuals may have been Indians of the Stockbridge or other local tribes rather than unknown Brothertown Indians.

OFA researchers compiled a list of 1860 residences of Brothertown allottees and their children by consulting the Federal census of 1860 and information in the petitioner’s genealogical database (U.S. Census 1860, Brothertown Township) (see Appendix E). By 1860, all of the children on the 1839 Allotment List had reached the age of 21. Therefore, this analysis of the 1860 census considers the individuals on the 1839 Allotment List who were still living and the adult children of allottees who came to Wisconsin or were born there. By this definition there were 392 Brothertown allottees or their adult children living in 1860. This evidence does not reveal the existence in Brothertown Township of an area consisting almost exclusively of Brothertown households or mostly of Brothertown households, but there was an area in which just half of the households contained Brothertown descendants or other individuals designated as an “Indian” (75 of the 147 households between #5 and #151). This majority “Indian” area

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22 For the purposes of this analysis, adult is defined as age 18 or older, or an individual born in 1842 or earlier. Additional research may provide more data on death dates that will reduce the number of people included in this analysis, and more information about the children of allottees that will increase the number of people included in this analysis. This evaluation uses the best information available at the time of this proposed finding.

23 Brothertown allottees or an adult child of an allottee resided in 61 of these 147 households, and another 14 households included an “Indian” individual not identifiable as a Brothertown descendant.
included 40 percent (156 of 392) of the 1839 allottees and their adult children in 1860, and 38 percent (124 of 328) of the still-living Brothertown allottees. The existing data do not demonstrate that the petitioner meets either the 50 percent standard or the “almost exclusive” standard of section 83.7(b)(2)(i) in 1860.

For 1870, OFA researchers also compiled a list of residences of Brothertown allottees and their children by consulting the Federal census of 1870 and information in the petitioner’s genealogical database (U.S. Census 1870, Brothertown Township) (see Appendix F). The evidence now available identifies 458 Brothertown allottees or their adult children living in 1870. As in 1860, the available evidence does not reveal the existence of an area consisting almost exclusively of Brothertown households or even mostly of Brothertown households. However, in Brothertown Township there was an area in which just half of the households contained Brothertown descendants or other individuals designated as an “Indian” (53 of the 105 households between #194 and #298). This majority “Indian” area included 24 percent (111 of 458) of the 1839 allottees and their adult children in 1870 and 22 percent (65 of 291) of the still-living Brothertown allottees. The existing data do not demonstrate that the petitioner meets either the 50 percent standard or the “almost exclusive” standard of section 83.7(b)(2)(i) in 1870.

In 1875, households of Brothertown descendants constituted about one-fifth of the households in Brothertown Township, the former Brothertown reserve. The 1875 State census of Brothertown Township listed 315 heads of families; 60 of them are possible Brothertown descendants or men married to Brothertown descendants and another 5 are possible non-Indian ancestors of the petitioner (Wisconsin 1875, Calumet County, Brothertown Township). Because this census did not give the age of the household head and did not name any spouse or children in the household or give their ages, it is not possible to be confident about the identification of individual Brothertown descendants or ancestors of the petitioner on this census. In addition, the census enumerator identified people by their initials rather than their given names. The census also did not provide geographical information about where these people lived within the township. Bearing these difficulties and sources of error in mind, a tentative list has been made of Brothertown families in Brothertown Township in 1875, adding information about spouses and allotment or roll numbers from other sources (see Appendix G).

Brothertown families had become a minority of the population of Brothertown Township by 1875, but, assuming the census was compiled in geographical order, most of those families resided in a number of geographical clusters of various sizes that consisted mostly of Brothertown families. One cluster, perhaps including the village of Brothertown, contained 11 to 14 households of Brothertown descendants within a range of 19 consecutive households (Wisconsin 1875, Brothertown Township, [p.6], lines 6-24) (see Appendix G). Three of these individuals appear to have owned land in 1893 in the village of Brothertown and in 1893 the

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24 For the purposes of this analysis, adult is defined as age 18 or older, or an individual born in 1852 or earlier. Additional research may provide more data on death dates that will reduce the number of people included in this analysis, and more information about the children of allottees that will increase the number of people included in this analysis. This evaluation uses the best information available at the time of this proposed finding.

25 Brothertown allottees or an adult child or grandchild of an allottee resided in 46 of these 105 households, and another 7 households included an “Indian” individual not identifiable as a Brothertown descendant.
heirs of two others owned land north of the village (Foote 1893, 58, 48). Another cluster, perhaps along Military Road, contained 10 or 12 possible descendants and non-Indian ancestors within a range of 22 households ([p.9], lines 12-33). Some of these individuals owned land in 1893 along Military Road at the southern end of the township (Foote 1893, 48). Another range of 32 consecutive households contained 14 to 17 households of Brothertown descendants ([p.2], lines 2-33) in an unknown location. These various geographical clusters were separated from each other, however, by long lists of non-Indian settlers. Thus, there was no geographical area “almost exclusively” composed of Brothertown descendants in 1875.

An 1893 plat map of Calumet County reveals that land ownership by Brothertown descendants within Brothertown Township, the former Brothertown reserve, had declined significantly during the fifty years since patents for the entire township were issued to Brothertown members in 1842 (Foote 1893, 48-49, 58; Manitowoc Genealogical Society 1989). Nineteen individuals listed on either the Brothertown allotment list of 1839 or the Brothertown claims roll prepared by Guion Miller in 1901 owned land in 15 of the 240 lots in the township, or no more than 6 percent of the former reserve (see Appendix H) (see Figure 5). Most of these landowners did not own the entire lot, and in some cases owned a very small tract. Possible Brothertown descendants owned land in three other lots. In addition, tracts of land in Brothertown Township were owned by one or two non-Indian spouses of descendants on the 1901 Miller Roll, including land in six lots owned by George Baker [Sr.]. Most of the land owned by Brothertown descendants was along the old Military Road or just east of the road in the westernmost portion of the township and in the area of actual settlement at the time the reserve was allotted in 1839 and patented in 1842.

The number of Brothertown descendants who lived in Brothertown Township, or Calumet County, declined throughout the 19th century. The 1900 Federal census included a “Special Indian Schedule” which identified 112 residents of Brothertown Township as “Brothertown” Indians (U.S. Census 1900). An additional 13 identifiable Brothertown descendants were enumerated on the general population schedule of the census as “white.” These individuals were working or boarding in non-Indian homes, or their fathers or husbands were non-Indians. Some of the people identified as Brothertown on the Indian schedule—such as Jonathan Schooner and Almirion DeGroat—were not recognized by the Brothertown group as members. As the Indian schedule placed all Indians on a separate schedule without indicating where they lived, it is not possible to determine where these Brothertown Indian families lived in relation to each other and the extent to which they may have been concentrated in a residential area. These Brothertown descendants on the 1900 census accounted for 8 percent (125 of 1,539) of the total population of the township. In 1910, the 110 identifiable Brothertown descendants in Brothertown Township constituted 7 percent of the township population of 1,468.

26 In addition, two smaller clusters including five households of Brothertown descendants can be identified in the township. These small clusters were one in which possible Brothertown descendants resided in 5 of 6 consecutive households ([p.4], lines 28-33) and one in which they resided in 5 of 10 consecutive households ([p.7], lines 23-32).
27 Land descriptions in the former Brothertown reserve depart from the standard use of township, range, and section designations for lands surveyed by the General Land Office. In order to allot the lands of the reserve under the Act of 1839, the reserve was surveyed into 240 lots, and those lands are described by 240 lot numbers rather than by 36 section numbers.
28 The Indian schedule also identified 12 people as “Stockbridge.”
Brothertown Indian Nation (Petitioner #67) Proposed Finding
Criterion 83.7(b)

The Methodist Church

Information in the record indicates that the Methodist Church became an important institution after 1839 and into the 20th century. The group had been Baptists when they first arrived in Wisconsin, and established the first Baptist congregation in the territory in 1834. Brothertown member Benjamin G. Fowler (1774-1848) served as an itinerant Freewill Baptist minister among his people until his death, but the Baptists appear to have lost most of their influence over the group soon after they accepted citizenship. However, in 1840s, the Brothertown descendants formed a Methodist congregation and built a Methodist church. Thomas Commuck, who had also served as a Brothertown commissioner, donated or sold (different documents report differently) the land on which the Methodist church stood. The Society for Propagation of Christian Knowledge, a Scottish missionary organization, noted in 1841 that “. . . an interesting revival of religion amongst the Brotherton [sic] Indians . . . under the labors of the Methodists . . .” had taken place that past winter (Rabito-Wyppensenwah in Stone n.d., 545). In 1846, the same organization also noted “The Brothertown Indians . . . have a Methodist Missionary residing amongst them and a (Methodist) Church has been gathered as the fruit of Missionary labor amongst them, numbering 100 members” (Rabito-Wyppensenwah in Stone n.d., 545).

The record includes a copy a number of “class records”, which appear to be lists of adult church members. Many non-Indians and Stockbridge Indians attended the church, but most of the attendees were Brothertown descendants. In 1843, Randal Abner, Lewis Fowler, Orrin Fowler, Daniel Wyatt, and David Wiggins were all identified as leaders in the church, although non-Indians served as local preacher and exhorters (Abner et al. 1843, 1-2). The record book identifies 72 members and 32 individuals still “on trial.” The petitioner identified 45 of the 72 members as Brothertown descendants, but did not indicate which 45 they believed to be Brothertown descendants. OFA’s analysis of the same list identified 44 Brothertown descendants: 42 Brothertown patent recipients, one Brothertown woman who married a non-member and therefore was not allowed to participate in the allotment, and one man whose mother was probably a Brothertown, but who was not considered a member because of his non-Indian father (his Brothertown wife, whose parents and three brothers all received patents, was not allotted because of her marriage to a non-Brothertown). In addition, OFA also identified eight patent recipients among the people “on trial.” As both lists only included adults, the children of members are not included in the number of descendants who attended the church. However, the number of patent recipients named as members and potential members indicates that the church’s membership was a predominantly Brothertown Indian institution (with a notable portion of Stockbridge Indians).

Non-member Brothertown Descendants

Another group of people who might best be described as “non-member Brothertown descendants” lived among the other Brothertown Indian descendants for many years. These include Brothertown women (referred to in several petition documents as “Brothertown by blood”) who had been recognized as members, but who had lost their affiliation by marrying non-Brothertown men (their brothers, regardless of whom they married, remained members, as did their sisters who had married Brothertown members or who remained single). They also
include the children of these women who continued to associate with their Brothertown first cousins, but were not considered members because of their non-Brothertown fathers. In some cases, half-siblings of different fathers also fared differently; children of a Brothertown woman’s non-Indian husband were not acknowledged as members, but the children of a marriage to a Brothertown descendant were acknowledged as members. It does not seem to be the case that these women were shunned or encouraged to leave the area with their non-Brothertown husbands, but these people were not considered members of the group at the time for the purposes of receiving money or land. Some members of the current petitioner trace their descent though these individuals to get to an ancestor on the 1839 land distribution list, even though these ancestors might not have been identified as members of the group in the 62 years between the 1839 allotment and the 1901 Miller Roll.

Some non-member Brothertown descendants, such as Nancy Johnson Schooner (1814-1880) and her children, remained in Brothertown even though they did not receive land. Nancy and her husband, Jonathan Schooner (1810-1903), were both born in New York, and moved with the group to Wisconsin. Jonathan is listed as the head of household 19 on the 1840 Federal census, in the midst of a group of several Brothertown households. The couple also joined the Brothertown Methodist church, and remained members all their lives.

The family of Elizabeth Mathers O’Brien Shelley (1797-1863) is another example of non-member Brothertown descendants who remained in and around Brothertown. Her oldest children, Charles and William O’Brien, were not considered members because their father was a non-Brothertown. However, sometime before 1839, she appears to have ended her relationship with O’Brien and married a Brothertown man surnamed Shelley. This act returned her to tribal membership, and she received land under the name “Elizabeth Shelley.” Her children surnamed Shelley also received land. Likewise, Harriet Mykel Denny Welsh (1836-1907) lived her life in Brothertown, but was also not considered a member of the group because her father was a non-Brothertown. Her half-siblings by her mother’s second marriage to John C. Hammer in 1839 were considered members of the group, although they did not all receive land because they were born after the land had been distributed.

Brothertown Social Interactions, 1850-1862

The petition record for the period of 1850-1862 contains few documents other than the Federal censuses and Methodist church records which would indicate the group’s social interactions during this time. The information regarding claims issues the group pursued during the 1850s and discussed under criterion 83.7(c) indicates a certain degree of social cohesion, but does not give an indication of any regular, day-to-day interactions among members of the group.

The population of Brothertown included a number of non-member Brothertown descendants and their families during this period. In 1850, Jonathan and Nancy Schooner and their children are enumerated on the Federal census in dwelling 19, in between Nancy’s cousins in dwelling 18

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29 The petitioner’s database does not include a marriage date for Elizabeth O’Brien and Bradley (or Simeon) Shelley; Elizabeth Shelley, their daughter, was born in 1832, and Hannah Shelley was born in 1833. There is no birthdate given for their son Simeon Shelley.
Brothertown Indian Nation (Petitioner #67) Proposed Finding
Criterion 83.7(b)

(the children of Emanuel Johnson) and her brother Orrin G. Johnson in dwelling 20 (U.S. Census 1850). Jonathan Schooner is also listed as owning $200 worth of real estate, indicating that he purchased land in Brothertown near his wife’s relatives. The Schooner’s 11-year old granddaughter, Charlotte, was also enumerated in the household of her uncle William, along with William’s widowed mother Charlotte Johnson, and his 21-year old brother Elisha, who is identified as “blind” (U.S. Census 1850). It is likely that the 11-year old Charlotte assisted the family in caring for the blind Elisha.

The population also included the large family of William and Nancy Welch. This particular family originated in New York, and had followed the Stockbridge and Brothertown Indians when they left New York. They were not identified as Brothertown Indians themselves, but they routinely married Brothertown descendants and were firmly established among the Brothertown descendants by 1850. The petition database includes information on nine Welch children (six brothers, three sisters), six of whom married or were in relationships with Brothertown descendants in 1850. By 1850, William Welch, Jr., was married to 1839 land recipient Rachel Scipio, Henry Welch was married to 1839 land recipient Lucy Skeesucks, their brother Erastus Welch was the widower of 1839 land recipient Lucinda Brushel and currently married to an unallotted daughter of 1839 land recipient Aurilla Peters, and their other brother John Welch was in a relationship with Mary Ann Hart (herself the child of John’s sister-in-law Lucy Skeesucks from a previous relationship). The Welch sisters also married Brothertown men; in 1850, Sabrina Welch was married to 1839 recipient Simon Shelley Sr; Nancy Welch was married to 1839 land recipient Henry Brushel (Henry was the brother of Lucinda, who had been married to Nancy’s brother Erastus at the time of her death), and Mary Elizabeth Welch married Thomas Hammer, who was not allotted land (possibly because he had arrived in Wisconsin at a late date), but was still considered a Brothertown (Guion Miller Testimony 1903, 43, 56). Some of William and Nancy’s grandchildren were of age in 1850 to have spouses of their own, and some these children also choose Brothertown descendants as spouses: for example, Thomas Welch, the son of Henry Welch by another women named Lucy (not Lucy Skeesuck) eventually married two Brothertown women (the first, Hannah Potter, in or around 1850; the second, 1839 allotee Juliette Peters, in 1892). Another Welch grandchild, Calista Welch, the daughter of David Welch and claimed Stockbridge Myriah Johnson, married George Baldwin in 1850; George Baldwin was the son of a Brothertown woman (Aurilla Peters) who married a non-Indian and lost her right to participate in the land allotment in Wisconsin. Welch ancestry, as well as the Welch surname, was well on its way to becoming common among the larger group of Brothertown descendants.

The Methodist church “class record” of 1850 lists 69 individuals, 41 of whom were Brothertown patent recipients, and another nine who appear to be connected to the Brothertowns by marriage or blood, but who had not received allotments. Orrin G. Johnson and David Wiggins, both

30 It is unclear whether William and Nancy Welsh were part-Indian. William III, son of William Jr. and Rachel Scipio, testified that his father was a “Mohawk Dutchman.”

31 Brothers William, Benjamin and David Welsh all married Stockbridge (or claimed Stockbridge) women.

32 There was also a 20th century marriage between a non-Indian “Welsh” and a Brothertown non-member descendant “Welch,” which introduced the “Welsh” spelling into the current petitioner.
Brothertown allottees, are identified as “leaders” of the congregation. Interestingly, only one member of the Welch family (Sabrina/Sabine Welch Shelley, wife of Simeon Shelley) is listed among the members of the church.

Brothertown Descendants and the Civil War, 1861-1864

The outbreak of the Civil War in 1861 resulted in the enlistment of a number of Brothertown descendants in the Union Army. There is no information in the record indicating whether or not the Brothertown descendants enlisted in the army as a group. One document submitted by the petitioner states that “practically the entire adult male population of the [Brothertown] township enlisted in the 21st Wisconsin Regiment of volunteers” (Sheets et al. 6/6/1935, 9), but it is not clear whether the author meant to indicate that all of the male Indian descendants enlisted, or that all male residents in the township enlisted, regardless of ethnicity. A document included in the petition lists 40 Brothertown descendants who served in the Civil War, but of those 40, only 4 are listed as having served with the 21st Wisconsin (7 served with the 4th Wisconsin cavalry, 5 with the 5th Wisconsin, 5 with the 2nd Wisconsin Cavalry, 4 served with the 36th Wisconsin, and the remaining served with a number of other companies during the war, including 2 in New York and 2 in Kansas (Rabito-Wypensenwah in Stone 1991, 553). The information in the petitioner’s database indicates that there were more Brothertown descendants who served in the Civil War, but the record does not contain a compiled list of all veterans. The petition record also includes a reference to a collection of 119 letters written by Brothertown soldiers during the Civil War (Heller Collection n.d., n.p.); unfortunately, the letters themselves are in the possession of a private individual who has only allowed limited access to them, so the letters themselves are not available for analysis (Metoxin 10/16/2008, 27-9).

The Civil War undoubtedly affected life amongst the Brothertown descendants in Calumet County, especially considering that so many men served. The record, however, contains little information about the community during that time. There are no newspaper articles, diaries, or other records indicating how the community fared during wartime.

Upon their return, veterans of the Civil War may have renamed an existing cemetery “Union Cemetery” in honor of those who served the Grand Army of the Republic. One document in the record stated that the cemetery was originally a Baptist cemetery, which indicates that it predated the Civil War (Anonymous 7/1977, 1), and some of the dates on the headstones do predate the war. The petition documentation does not include information on the establishment of the cemetery, but both Indians and non-Indians and their families were buried there. The cemetery was segregated, with the Indians and their families buried on one side, and Whites buried on the other. The petition documentation did not include a map of the cemetery, but the

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33 In a 2008 interview, one of the members of the group indicated that the group had identified 95 or 99 men who had served in the Civil War (Stephenson 10/21/2008, 21). The petition documentation did not include a copy of this list.

34 The cemetery is also referred to in a number of obituaries as simply the “Brothertown cemetery.”

35 The petition documentation includes several references to maintaining Union cemetery and some other family burial plots. As of this writing, a University of Pennsylvania student named Craig Cipolla was working on a project mapping various Brothertown cemeteries.
segregation was obvious to OFA staff visiting the area in 2008. When standing facing the
 cemetery entrance gate, the older non-Indian burials were located on the left side of the cemetery
 and the older Indian burials on the right side. This appears to be the “burying ground” that the
group voted to fence off in 1875, although it is not clear if they were planning on fencing the
entire cemetery or the portion containing Brothertown descendants.

After the Civil War, 1865-1879

The Methodist church continued to be an important institution for the Brothertown descendants
still living in Brothertown. The “class records” are not available for the first half of the 1860s
(probably due to the war), but from 1865-1869, three of the five church trustees were
Brothertown descendants David Wiggins, Lucius S. Fowler, and Orrin G. Johnson.36

The immediate post-Civil War period also introduced a new family name among member and
non-member Brothertown descendants. According to testimony taken by Guion Miller in 1903,
two large families surnamed DeGroat came from New York State after the Civil War and settled
in the vicinity of Brothertown (Guion Miller Testimony 1903, 46, 55). This appears to be a
reference to the families of Richard and Elizabeth DeGroat, and John M. and Harriet DeGroat
(Harriet came to Brothertown widowed, having lost her husband in the war in 1865). Richard
and John were brothers who had married sisters Elizabeth and Harriet (the couples were also
second cousins to each other). It is unclear why the DeGroats moved to the area, as it is not
evident that they had relatives there at the time. Philina Fowler DeGroat (1792-bef.1860) the
mother of Harriet and Elizabeth Degroat DeGroat, appears to have visited Brothertown even
before her daughter and grandchildren moved there; 84-year old Elias Dick testified that he had
seen her in Brothertown, and Philinda died before 1860 (Guion Miller Testimony 1903, 55).
There is an indication in the Dick testimony that Philinda Fowler DeGroat had made a claim to
being a Brothertown descendant during her lifetime, but there are no documents in the record
confirming this. Over time, the DeGroats would also marry member and non-member
Brothertown descendants, and their surname would enter the group.

Despite the presence of more and more non-Indian families in the town, the Brothertown
descendants continued to play an important role in maintaining the Brothertown Methodist
Episcopal Church. Descendants Orrin G. Johnson, David Wiggins, John Wiggins, and John C.
Hammer all served as church trustees at various points during the 1870s (Johnson served as
trustee each year from 1871-1878; David Wiggins served from 1871-1874; John Wiggins served
in 1872; Hammer served in 1877 and 1878). Non-Indians also served as trustees, but there was
at least one Brothertown descendant on the board of trustees throughout the 1870s (Carlton and
Porter 1832-1889, 11). The available 1874 “class record” lists 17 people, eight of them
identifiable as Brothertown patent recipients, and five others related to allotees by blood or
marriage; the record for 1876 lists 23 people, including seven of the same patent recipients, as
well as two not listed in 1874 (Carlton and Porter 1832-1889, 4). In addition to serving as a
trustee, Orrin G. Johnson is also identified in the “class records” as the congregation’s “local
preacher” and “leader” in 1874 and 1876.

36 In 1868, Alonzo D. Dick was also named as one of the trustees of the Methodist church at Gravesville, a town
approximately 11 miles east of Brothertown (Carlton and Porter 1832-1889, 6).
The record included an advertisement for an 1873 New Year’s Eve celebration and oyster supper at a place called Phillip’s Hall (Advertisement 12/31/ 1873, 1). The advertisement does not say in which town the hall was located, but it does identify four “managers” from Brothertown, two from Stockbridge, and two from Chilton. Three of the four managers (J.C. Hammer, Willie Fowler, and J.J. Sampson) from Brothertown are identified in the petitioner’s database as Brothertown descendants, and one of the managers from Chilton, Cato Stanton, had been married to Brothertown descendant Almira Dick until about 1870. “Floor managers” E.M. Dick and Melville Johnson were also Brothertown descendants, as was proprietor L.P. (Lyman Palmer) Fowler.37 There is no other information in the record describing whether this New Year’s celebration was a regular event, or any other indication that these men regularly hosted events. There is also no information regarding who attended the event. There is no indication that these men worked together to host other events, or if these these events were attended exclusively or predominantly by Brothertown descendants.

Migration to Minnesota

In the years after the war, some of the returning Brothertown soldiers and their families eventually left the Brothertown area for land in Minnesota. The petition documentation gives several different reasons why certain people left Wisconsin, but the availability of land in Minnesota for homesteading was probably the most compelling reason. The Great Sioux Uprising of 1862 resulted in the expulsion of Lakota from Minnesota and opened up the area for non-Indian settlement. The 1995 and 2005 petition narratives also state that after 1870 there are “strong indications that the Brothertown sold off a large portion of their land” (BIN 1996 74: BIN 2005, 63-4), but the petition documentation did not include an analysis of land sales or land transfers during the 1860s. It is unclear whether or not the 50-acre parcels lands allotted to the members had become inadequate to support large families, or if any of the recipients lost the land due to non-payment of taxes. The petitioner’s 1995 petition narrative made the claim that some of the land in the township was lost due to non-payment of taxes (BIN 1995, 109), but did not submit any documents recording these losses.

George White, a non-Indian married to Brothertown descendant Lettie Shelley, moved to Minnesota in 1865 with his wife, children and extended family (White’s three sisters and their husbands and children). The group settled in Long Prairie, Minnesota, approximately 400 miles from Brothertown in the vicinity of a former Indian agency and established a neighborhood called Whitesville (Sheets et al. 6/6/1935, n.p.). Years later, David and John Shelley, both uncles of Lettie Shelley White, chose to leave Wisconsin and settled in the same area of Minnesota as their niece. Several additional families of Brothertown descendants eventually settled near Long Prairie, Minnesota, in the late 1870s and 1880s (Sheets et al. 6/6/1935, n.p.). These families included eight Brothertown patent recipients38 and a number of their children. It is unclear from

37 Later, Cato Stanton’s son Moses would marry Lyman Fowler’s daughter Ella.

the information provided whether or not the families who moved remained in contact with the families who went to Minnesota.39

Some non-member Brothertown descendants also left Calumet County. Erastus Welch Jr., the son of Erastus Welch and 1839 allottee Lucinda Brushell, left Wisconsin and received a patent for 56 acres of land in Redwood Falls, Minnesota, in 1879 (United States 3/13/1879, 1). This town, located approximately 400 miles of Brothertown and 100 miles south of Long Prairie (see fig.4 for locations of Long Prairie and Redwood Falls), also attracted a number of other people from Brothertown and Stockbridge. By 1880, several Welch family members, including Erastus’ sister Esther Welch O’Brien, his brother-in-law Hiram Rhodes (the son of 1839 allottee Rachel Scipio), and his first cousin William Welch (who was also the son of 1839 allottee Rachel Scipio, and therefore the half-brother of Hiram Rhodes) were also living in Redwood Falls. Erastus Welch’s second cousin, Lillian (“Lillie”) Skeesuck (daughter of 1839 allottee Arnold Skeesuck) and her husband Charles DeGroat (spelled “Degrote” on the census) had also moved to Redwood Falls. Lillian Skeesuck’s sister Hannah had also married John Franklin (or “Frank”) Welch and was also living in Redwood Falls, two households away from to Erastus Welch and one household away from Esther O’Brien and Hiram Rhodes.40 In years to come, a number of other member and non-member Brothertown descendants would also move to Redwood Falls, some temporarily, some permanently.

Social Interaction among Brothertown Descendants, 1880-1906

During the 1880s, several Brothertown descendants participated in the Good Templar fraternal organization. This organization was a popular organization after the Civil War. The co-ed institution supported temperance and also sold life insurance. Among the Brothertown descendants still living in and around Brothertown, Wisconsin, Edgar M. Dick served as an officer in the state-wide organization (Milwaukee Daily Journal 9/5/1888, col. B). The leadership of the Brothertown Good Templar (or “G.T.”) Lodge included several Brothertown descendants- E.M. Dick, Francis M. Hammer, Theodore Dick, Elizabeth A. Fowler, Francis Niles, Lathrop Fowler, and Harriet A. Niles (Chilton Times in BIN Newsletter 8/1986, 9). There are other individuals who are also probably Brothertown descendants, but their identity cannot be confirmed, as they are identified by first initials and last names. The evidence in the record does not indicate whether or not the Brothertown “G.T.” Lodge also had non-Indian members

39 In 1887, a newspaper reported that a girl named “Alice Johnson” had applied to the local police superintendent of Milwaukee, stating that she was from Long Prairie, MN, and had been there for four years, but that her family lived in Fond du Lac; according to the article, the police provided her with a train ticket to Fond du Lac, but then soon after, a woman from Waukesha wrote to say that the girl’s mother lived in Brothertown, and that the girl had been missing for a long time (Milwaukee Daily Journal 11/18/1887, Col. D). The petitioner’s genealogical database did not include any female under the age of 21 named “Alice Johnson,” but it is possible that this girl was one of the Brothertown descendants.

40 Unlike the other descendants, Lillian and Hannah Skeesuck were the daughters of a Brothertown man and his non-Indian wife, and, thus, acknowledged as members of the group by virtue of their patrilineal descent. However, their marriages to non-Brothertown members resulted in the loss of their membership; their brother Sylvester (who legally changed his surname to “Sykes”) was identified as a member on the 1901 Miller Roll.
The 1885 Methodist church “class record” lists 39 members, including 14 of the 1839 allottees, 4 people related by blood or marriage to Brothertown descendants who did not receive an allotment, and 1 adult child of an allottee.\(^{41}\) This is the last of the class records included in the petition documentation. The list of church trustees also indicates that the Brothertown descendants all resigned their positions in 1885, but there is no indication as to why this happened (Carlton and Porter 1832-1889, 12). Additional material included in the record indicates that the church still remained an important institution for the Brothertown descendants well into the 1920s, even as more non-Indians attended.

Most of the information in the petition record during the 1880s relates to the group’s political claims, particularly those related to the *Fowler vs. Scott* case before the Wisconsin Supreme Court, the resolution of the “fractionated lands” issue, and the settlement of the so-called “Kansas claims.” Some of the documents give insight into the social interaction among Brothertown descendants, such as a meeting held December 2, 1886. At this meeting, brothers John and Solomon Niles were elected to solicit names for a contract between the group and attorney J.C. Adams (Niles 12/2/1886, 1-10). The list attached to this document included 147 legible signatures, including those of 4 women who had signed a 1876 power of attorney to have their names placed on the Brothertown rolls (see discussion under 83.7(c), “Brothertown Political Activity and the Issue of An Internal Political Process After 1839”). The list also included the signatures of three members of the Pemberton family and four members of the Reed family; all descended from Brothertown women who married non-Brothertown men. There were also other women who married non-Brothertown men, such as Marie (Maria) Wiggins DeGroat, Lovinda Fowler Dayton and Grace Dick Jacques (all of these women were the daughters of two 1839 allottees, but were born after the lands had been patented). These non-member Brothertown descendants accounted for approximately 10 percent of the names on the list (the list also includes a number of other names who are not included in the petitioner’s database). The presence of these names may indicate that, at this time, the group of member and non-member Brothertown descendants worked together in pursuit of their legal claim. The petition did not include additional documentation examining the relationship among members and non-member descendants during this time.

In 1893, the New York Indians (which included the Oneida, Stockbridge-Munsee and Brothertown) collectively won the right to pursue their claims regarding the Treaty of Buffalo Creek through the U.S. Court of Claims (see discussion under criterion 83.7(c)). The documentation in the record provides little insight into what the members of the group were doing during this time, but one source does indicate that at least some of the members and non-member Brothertown descendants were discussing whether or not they would be included in the claims case. One letter written by John Niles to attorney J.C. Adams in 1892 makes reference to the “old customs” that the group was under before its members accepted citizenship, which may have been a reference to the rules involving patrilineal descent (Niles 3/6/1892, 1-2). However, this letter and another, dated June 11, 1893, also makes reference to Niles’ displeasure with meetings of unspecified people at the home of Charles Welch, people Niles did not consider

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\(^{41}\) The 1885 “class record” also includes one spouse of a man who claimed to be a Brothertown descendant, but who was not acknowledged by the larger group, as well as four names of people who have common Brothertown surnames, but who are not included in the petitioner’s genealogical database.
Indians (Niles 3/6/1892, 2). Niles appears to have been particularly disturbed by James Simons (the elected Brothertown “chief”) attending one of these meetings in 1893 (Niles 6/11/1893, 2). Niles was part of the committee that collected the names for the 1886 power of attorney with J.C. Adams, a list which included some people who were excluded from the group based on those “old customs,” yet seemed very adamant that the people meeting at the home of Charles Welch were not Indians. There are no other documents in the petition which describe what these meetings may have been about, or that name those who attended. There is also no other information describing the reaction of any other members of the group to these meetings.

The 1900 census provides examples of Brothertown descendants boarding other descendants (U.S. Census 1900). Widower Edgar M. Dick boarded other widowed Indians. His second cousin Hannah (Abner) Commuck and Lucious (also spelled “Lucius”) Dick, his second cousin once removed, were both enumerated in his home. Lucious Dick’s occupation was listed as “carpenter,” which indicates he was still working, but Hannah was an 85-year-old widow whose 10 children had all predeceased her. Rebecca (Abner) Johnson, Hannah (Abner) Commuck’s 84-year-old sister, was enumerated in her own home with a boarder, 80-year-old Elias Dick, the widower of her second cousin Serepta Crosley. These examples of boarding elderly or disadvantaged members of the group are good examples of community among the Brothertown descendants residing in Brothertown, but are too limited in number to know if this behavior was typical of the whole group of Brothertown descendants. Many Brothertown descendants continued to farm in 1900, sometimes working for themselves and sometimes working for others. Edgar M. Dick ran a grocery store. All of the Brothertown descendants appear to have received some formal education, as all were recorded as “literate” in 1900, and Rizpah Crowell and Ella Fowler were both identified as school teachers. In 1910, Nettie Dayton was also identified as a teacher in a public school (U.S. Census 1910).

The 1901 Claims Rolls

The 1901 claims roll of Brothertown descendants prepared by Guion Miller (1901 Miller Roll) contained more than twice as many people as the list prepared by the Brothertown Business Committee (see Appendix I). The 1901 Brothertown Business Committee’s list, which was completed at the end of November 1901, consisted of 209 individuals (Brothertown Business Committee 11/30/1901). Two individuals on the list had died during the three-month period when the list was being prepared, so the final list included 207 living individuals. The 1901 Miller Roll identified 570 individuals eligible to share in the claims award (BIA 12/31/1901). Miller included on his claims roll 205 of the 207 living individuals on the Committee’s list. He may have placed on his roll five individuals on the Committee’s list even though they did not file a claims application. Miller thus accepted the Business Committee’s identification of

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42 Charles H. Welch (1834-1902) was the husband of Abbie Hart Welch (1845-1908), the daughter of two 1839 allottees who had signed the 1876 power of attorney along with other women who had married non-Brothertown men (see discussion under criterion 83.7(c)). If the meetings were held at this house, it is possible that the people attending may have been women who lost their affiliation by marrying non-Brothertown men.

43 The Business Committee said, in the cover letter transmitting its list, that there were “6 or 7 families” it would have included on the list but did not because their address was unknown to the Committee and it was therefore unable to “get their names to place on the Roll” (T. Dick et al. 12/2/1901). The Committee named seven individuals, although two were a father and son joined as one possible family.
Brothertown descendants, but he added to his claims roll another 365 Brothertown descendants not listed by the Business Committee.

The list prepared by the Brothertown Business Committee not only was smaller than the 1901 Miller Roll, but also was more concentrated in the local area around the former Brothertown reserve. About 33 percent of the individuals on the Committee’s list had a Brothertown Post Office address, compared to 21 percent of the individuals on Miller’s roll (see Table 1). The majority of the Committee’s list (54 percent), but not Miller’s roll (42 percent), resided either in Calumet County or one of its six adjacent counties. Another difference between the two lists was that Miller placed on his roll 27 residents of New York or Connecticut, while the Committee did not include any of those Easterners.44 Residents of the two States of Wisconsin and Minnesota constituted 95 percent of the Committee’s list. There were only four towns with more than 10 people on the Committee’s list (see Appendix J), and 71 percent of the individuals on that list resided in those 4 areas. The Brothertown Committee list consisted mostly of individuals with Post Office addresses at Brothertown, Wisconsin (N=68), or Long Prairie, Minnesota (N=51). These two locations provided 57 percent of the individuals on the Committee’s list.

The Brothertown Business Committee did not include on its list many of the Brothertown descendants living in the Brothertown area or nearby in Calumet County. The 1901 Miller Roll included 121 Brothertown descendants who had a Brothertown Post Office address, but the Brothertown Committee placed only 56 percent (68 of 121) of those descendants on its list. The Committee also included on its list only 39 percent (16 of 41) of other Calumet County descendants on the 1901 Miller Roll and 36 percent (27 of 75) of descendants in neighboring counties. For Brothertown descendants residing in Minnesota in 1901, the Committee’s decisions varied greatly by location, although these differences reflected its attitudes toward families rather than places. The Committee included as part of their group in Wisconsin 86 percent (50 of 58)45 of Brothertown descendants in Long Prairie, Minnesota, 33 percent (5 of 15) of those in nearby Motley, Minnesota, and 5 percent (2 of 41) of descendants elsewhere in Minnesota. Guion Miller’s task was to identify all descendants of the Brothertown Indians, while the Brothertown Business Committee appeared to define its task as identifying people who would be considered tribal members by the tribe’s “former laws and customs” (E.M. Dick 9/16/1901).

The Business Committee used patrilineal descent as the basis for membership in the group. The Committee excluded from membership women who had married non-Brothertown men and the children of such marriages. On behalf of the Committee, E.M. Dick argued in 1901 that “there must be a line drawn somewhere” to limit claimants. By the “former laws and customs of the Brothertown Tribe” that had “governed the allotment of our lands here,” Dick said, “when a woman married out of our tribe, her rights . . . went with her husband,” but “when a man married

44 The Business Committee’s cover letter indicated that two or three of the families it was unable to place on its roll were located “in the East” (T. Dick et al. 12/2/1901). It is unclear whether the additional parenthetical comment “(Norwich, Conn.)” referred to them all or only to the family or families of Lester and Jerome Skeesuck.

45 The Business Committee included one more resident of Long Prairie on its list who was not found on the 1901 Miller Roll.
out, he and his children held their rights . . . with the tribe” (E.M. Dick 9/16/1901). In testimony
Elias Dick and Oscar Johnson gave Guion Miller in 1903 they both stated explicitly that the
Committee had excluded women married to non-Brothertown men as well as their children
(Miller 1903, 43, 51). In 1901, the Business Committee defined Brothertown “members” by
applying “former” customs rather than by considering its members to be those descendants of the
tribe who continued to live near to and interact socially with each other.

In contrast to the Business Committee, Miller included on his roll a number of children of 1839
allottees who had married non-Indians, as well as the children of women born after the allotment
who married non-Brothertown men.46 For example, Miller included Julia Coyhis and her
children, although they were not included on the Business Committee’s list. Julia Coyhis had
married a non-Indian named George Baker in 1864 and resided not far from Brothertown in
Chilton, Wisconsin. The Business Committee included five sons of John Shelley (John,
Franklin, Job, Ruben, and Benjamin) on their list, but omitted his two daughters (Mary and
Sadie) and their children.47 Miller included the two women and their children, even though the
children’s fathers were non-Brothertown men. There is no information in the petitioner’s
submission that reveals how the Brothertown Business Committee or the recognized members of
the group on the Committee’s list reacted to the inclusion by Miller of these individuals they had
formerly rejected. The petitioner’s documentation also does not indicate what reaction there may
have been from those individuals who had pressed their claims as Brothertown descendants and
had them acknowledged by Miller.

On the 1905 State census the households of identifiable Brothertown descendants constituted
only about one-tenth of the households in the former Brothertown reserve. It is possible to
identify 27 households in Brothertown Township and another 15 households elsewhere in
Calumet County on this census that included an individual on the 1901 Miller Roll (Wisconsin
1905, Calumet County) (see Appendix K). The majority of those Brothertown households were
clustered within a limited area of Brothertown Township. Just under one-third of the
households, 24 of 77 of them, in the range of households from family #175 to family #251
contained an individual included on the 1901 Miller’s Roll. The concentration of Brothertown
descendants was most apparent in the range of households from family #223 to family #244,
where they constituted 11 of 22 households. Brothertown descendants of the Fowler, Johnson,
Kindness, and Dick families made up 7 of 9 households from #223 to #231, probably in or near
the town of Brothertown.

Half of the households (21 of 42) in Calumet County in 1905 that contained Brothertown
descendants identified by the 1901 Miller Roll also included individuals who appeared on the
1901 Business Committee list. Families who remained in the town of Brothertown or within the
former Brothertown reserve were more likely than those who moved outside the reserve to be
included on the Business Committee’s list, but not all Brothertown descendants who remained in
the local area were considered to be Brothertown members by the Business Committee.

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46 Miller appears to have followed the rules regarding patrilineal descent in that he included those people who could
trace their descent from a lineal male ancestor alive on the 1839 list..

47 John Shelley was the son of 1839 allottee Simeon Shelley.
Brothertown descendants on the 1901 Business Committee List were most concentrated in 1905 in the range of households from family #223 to family #244, where they constituted 10 of 22 households. In Brothertown Township in 1905, 17 of the 27 households of Brothertown descendants on the 1901 Miller’s Roll contained individuals also found on the Committee’s 1901 list. In Calumet County outside of Brothertown Township, only four of the 15 households that included Brothertown descendants on the 1901 Miller Roll also included individuals on the Committee’s list (see Appendix K).

The 1905 State census reveals that Brothertown descendants living in adjacent households or nearby households were treated differently by the Business Committee. For example, in the area of Brothertown Township where Brothertown descendants constituted seven of nine consecutive households, the family of descendant Lovinia “Lorena” (Fowler) Dayton (family #226) was not included on the Committee’s list, while members of three adjacent Fowler households on one side and the adjacent household of E.M. Dick on the other side were included on the Committee’s list. Pairs of adjacent households of descendants listed as families #197-198 and #213-214 included a descendant placed on the Committee’s list and a descendant left off the list. Descendants Orvil Welch (#175) and Abbie “Abbley” (Hart) Welch (#176) were not included on the Committee’s list, while Charlotte (Fowler) Potter (#178) and Frederick Niles (#180) in nearby households were included on that list (see Appendix K). This evidence reveals that the Brothertown Business Committee’s list of 1901 was not an attempt to describe a geographical or social community, but to apply historical rules of membership.

Social Interaction among the Brothertown Descendants, 1907-1929

The record regarding the Brothertown descendants thins considerably after the settlement of the Kansas Claims. After the New York Indian claims were determined, there is little evidence in the record of group activity. The Brothertown Business Committee, which was primarily composed of older men, does not appear to have functioned after the claims settlement concluded, and there is little information in the record regarding any other type of activity among the group. A number of Brothertown descendants had already left the area for other parts of the State, including some who married into Oneida or Stockbridge families and settled on or near those reservations.

The petition record includes a 1931 article about a 1908 football game between the “Menominee Indians of the Menominee Reservation and the Red Springs of the Brothertown reservation” 48 (Green Bay Press-Gazette 11/28/1931). This is somewhat confusing, because there had not been a “Brothertown reservation” since 1839. As the article states that this match-up occurred at the Shawano fairgrounds, it is likely that the reporter was actually referring to the Stockbridge reservation. There is no indication that the “Red Springs” were an all-Brothertown team; in fact, the article states that several non-Indian players played on both the Menominee team and the “Red Springs.” The article names “the two Malones and the Tausey [sic] brothers” as “Brothertown” players. A document included in the petition submission about the Gresham-area football team circa 1910 identified Harry and Jim Malone and MacMillian, John, Mason, and

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48 “Red Springs” is the name of one of two towns (the other being Bartleme) where the Stockbridge-Munsee reservation is located.
Dan Tousey (Schmidt 1910, 1-2). Information in the petitioner’s database indicates that Harry and James Malone’s mother identified herself as a Stockbridge Indian, and the family lived on the Stockbridge reservation, but they also had a distant Brothertown ancestor (Lucy Skeesuck). The four Tousey brothers named here were also identified as Stockbridge Indians in the petitioner’s database, and the family lived on the Stockbridge Reservation, although they also had a distant Brothertown ancestor (Lucinda Brushell). The petitioner has not demonstrated that these sports teams were important Brothertown social organizations, or provided information regarding any participation by Brothertowns outside of the Shawano-Gresham area who may have either played with this team or traveled to watch them play.

The petition narrative describes the institution of “Brothertown Homecomings” becoming very strong during the early 20th century. There is no information in the record indicating when these celebrations began. According to the petitioner, these celebrations would occur during the summer, generally hosted at a local tavern in the nearby town of Quinney. Homecoming generally took place around the Fourth of July and lasted two or three days (BIN 1996, 95-96). Many Brothertown descendants attended these events and one surviving photograph from the Homecoming of 1917 shows over 100 people in attendance (Homecoming 7/1/1917, 1). Unfortunately, the photograph does not provide the names of the people who attended the event that year. There are also no other photographs, sign-in books, registers, or newspaper articles which might provide information about how many people attended in other years.

**Brothertown Descendants in Brothertown Township**

The petitioner submitted a diary kept by Brothertown descendant Belva Mosher (1890-1946). OFA also located a diary kept by Brothertown descendant Isabelle Keeville Pemberton (1871-aft. 1922). While Mosher’s diary was more detailed, she only kept it reliably from January 1917 until August 1917, with infrequent entries from 1918-1923; Pemberton’s diary was usually limited to a single line entry for each day, but she kept it from August 1912 until December 1922. These diaries provide the best examples of informal interaction among Brothertown descendants in Brothertown Township during the early 20th century.

Both women described visiting and being visited almost daily. The majority of Belva Mosher’s contacts were with other Brothertown descendants, although she also had a number of non-Brothertown visitors and acquaintances. Her aunt and uncle (Rosella and William Fowler) and her friend Ella (Fowler) Hammer were among her most frequent Brothertown visitors. She spent the night at Ella Hammer’s house on several occasions, particularly when Ella’s husband Carl was away working, and Ella also spent many night at Mosher’s home. She described attending several funerals of other Brothertown descendants (including Alexander Johnson, Ernest Quinney and Almira Dick) and seeing other Brothertown descendants there. She attended at least one dance with several other Brothertown descendants, as well as a number of birthday suppers. She also attended the 1917 Brothertown Homecoming, and did state that it was the largest the group had ever had (Mosher 7/2/1917, 84).

Isabelle K. Pemberton’s entries are briefer than Mosher’s, but they often name the same people, including each other (Pemberton, 1912-1922). Like Mosher, Pemberton had a number of non-Indian visitors and acquaintances, but she also had several Brothertown friends and relatives who
visited her. Ira and Lura (also spelled “Leura”) Kindness were frequent visitors to the Pemberton’s home, as were James Fowler and his second wife Ruby (his first wife had been Pemberton’s sister Letihta, who died in 1906). She also mentioned Brothertown descendant Hugh Fowler on several occasions, and recorded the birth of his son Roland.

Both women also recorded events such as births, fires, people visiting each other, and when men returned home from the service. An undated Social Notes column (circa 1920) also identified several Brothertown descendants visiting other descendants in Fond du Lac or being visited by relatives, just as Mosher and Pemberton described (Obituary, Frank F. Kindness 7/1960, 3). Both women also attended the Methodist church.

A number of Brothertown descendants participated in the Red Cross Auxiliary in 1918, which was also formed at the Brothertown M.E. Church. A local newspaper identified Lathrop Fowler as president, Ella Fowler as secretary, and E.M. Dick as treasurer (Fond Du Lac Commonwealth 1/2/1918, n.p.). These three Brothertown descendants were involved in the organization, but it is not clear if other Brothertown descendants also belonged to the Red Cross Auxiliary. If they were, it is not clear if these Brothertown descendants remained involved in the organization after the deaths of E.M. Dick and Lathrop Fowler. These men died within months of founding the auxiliary and within hours of each other (Fowler died on May 14, 1918, and Dick died later the same day).

Brothertown Descendants in Minnesota

The petitioner submitted information about the Brothertown descendants living in the town of Redwood Falls, Minnesota. One family in particular, the children of Frank DeGroat and Lydia Welch DeGroat, married a number of Brothertown descendants. This couple had moved their family of ten children from Calumet County to Redwood Falls around 1886, and a number of their children appear to have sought out Brothertown descendants as spouses. Cora Ann DeGroat married Bertram Hammer (a descendant of Brothertown member Thomas Hammer) in Redwood Falls in 1888. Cora’s brother, John Morris DeGroat, married Lucinda Brushell descendant Ida Luella Welch in 1899. LeRoy Welch (1872-1961), a Lucy Skeesuck descendant, was born in Wisconsin but moved to Minnesota at some point before 1902. In 1902, he married Mathilda “Millie” DeGroat (1880-1955). Willis Brinton DeGroat, the brother of Mathilda, John, and Cora, married two Brothertown descendants. In 1893, he married his first wife, Alice B. Welch, the sister of Ida Luella Welch and a descendant of Lucinda Brushell. After her death, he married Lucy Skeesuck descendant Minna Almira DeGroat in Redwood Falls in 1902. Minna’s parents Orrin and Catherine (Johnson) DeGroat had left Wisconsin sometime after their 1883 marriage in Calumet County and before the 1884 birth of their first child in Redwood Falls. The final DeGroat sibling to marry a Brothertown descendant was Lydia “Lizzie” DeGroat, who

49 The petitioner’s genealogical database includes two women whose maiden name was “Ella Fowler” but one died in 1865, and the other was married and should have been identified as “Mrs. Ella Hammer.”

50 This particular DeGroat family claimed Oneida ancestry through Mary Denny, wife of Benjamin Welsh.

51 Ida, Alice, and Archie Welch were the children of Erastus Welch, and had grown up in Redwood Falls after their father left Wisconsin in the late 1870s.
married Archie Welch, the brother of Ida and Alice Welch, in 1901. There is no information in the petition which indicates that the Brothertown descendants in Wisconsin continued to communicate with the descendants who had moved earlier, although some of the documents indicate that there was some visiting behavior among some of the Wisconsin descendants and the families in Redwood Falls, Minnesota, in future decades.

Meanwhile, of the Brothertown descendants in Long Prairie, Minnesota, the petitioner submitted the most information about the Skeesuck descendants (who now spell their surname “Skeesick”) This family descended from George Skeesick, who was born in Wisconsin, but moved with his family to Minnesota in the late 19th century. He would eventually father 15 children between 1903 and 1925. Unlike the Brothertown descendants in Redwood Falls, there is no evidence that the Long Prairie descendants married into particular families or sought marriage partners from any particular group. There is also no evidence in the record indicating that the Skeesucks wrote or communicated with the descendants remaining in Wisconsin.

Change Among the Brothertown Descendants in Brothertown Township

Like Edgar Dick and Lathrop Fowler, many other older Brothertown descendants passed away during the 1910s and 1920s. Theirs was the generation that served in the Civil War, petitioned to resolve the issue of the fractionated reservation lands, and addressed the issue of the Kansas claims. Many of these people had played vital roles within the population of Brothertown descendants, and when they passed, few people stepped in to take their place.

The two enumeration districts of Brothertown Township on the 1920 Federal census (which included all residents on the regular census schedule) enumerated 84 people identifiable as Brothertown descendants. Few Brothertown families with young children appear on the schedule (the family of Brothertown descendant William Baker, which included 10 children between the ages of 14 and 1, appears to be the exception). Interviews submitted by the petitioner indicate that some Brothertown families moved to the nearby city of Fond du Lac and continued to return to visit their relatives in Brothertown, but others moved further away and visits were less frequent. The information from the diary of Belva Mosher does indicate that some people wrote to each other to keep them apprised of events in each other’s lives, but as time went on, Brothertown continued to lose its younger Indian descendants. There is one example of an older widow living with a distantly related family (76-year old Charlotte Potter lived in the home of Charles Mathers, her second cousin twice removed), but it is the only example of such an arrangement among the Brothertown descendants in Brothertown Township.

The petitioner did not include a decade-by-decade marriage analysis that takes into account descendants living outside of Brothertown proper, but OFA was able to use the Federal census schedules (both the General Schedules and the Special Indian Schedules in 1900 and 1910) to identify marriages between Brothertown descendants in Brothertown Township in 1900, 1910, and 1920. The 1900 census of Brothertown Township reflects 21 marriages involving Brothertown descendants, 20 of which had two Brothertown-descended spouses (five of these couples had not been included on the 1901 Miller Roll for reasons that are unclear), and one

52 OFA performed an analysis of the 1901 Miller Roll and identified 26 married couples in which both the spouses appeared on this roll. Of those 26 couples, 15 lived in Brothertown township, while the other 10 lived in Wisconsin,
marriage between a Brothertown descendant and a non-Indian. In 1910, the census enumerated 22 families in which the husband and/or wife were Brothertown descendants (it also identified one couple who later married). Thirteen of the couples were Brothertown/Brothertown marriages (including a couple who had Brothertown ancestry, but claimed membership in other tribes). Eleven of these couples had been married before the 1900 census. The 1910 census provided evidence of one new marriage between 1900 and 1910 involving Brothertown descendants. One couple on the 1900 census died before 1910. The remaining nine marriages recorded in 1910 were between Brothertown descendants and non-Indians, and of those, five were new (or post 1900) marriages. The 1920 census reflected 16 marriages involving Brothertown descendants, 11 of which were between 2 Brothertown descendants, and 5 between Brothertown descendants and non-Indians. The remaining Brothertown-Brothertown marriages reflected on the censuses were extant marriages, and these numbers declined as spouses died.

The Six Nations Clubs

Many Brothertown descendants joined the Six Nations Clubs during the late 1920s. These clubs, originated by Oneida Laura Cornelius Kellogg and her non-Indian husband, Orrin, were sites of fundraising activity in Wisconsin, New York, and even Canada, to pay the costs of pursuing a claim against the U.S. Federal Government (see discussion under criterion 83.7(c)). Although the petitioner’s 1995 petition narrative stated that the Six Nations Clubs served as important social institutions during this time (BIN Summary 83.7(b) 10/21/1995, 108), the documentation in the record does not support this argument. The meetings described in the record did not have a social element; rather, they only discussed the progress of the claims and fundraising in order to pay for those claims. The fundraising efforts also appear to have been limited to requesting members to pay a certain amount, with the promise that they would be repaid when the government eventually settled the claims. While several older members remembered Orrin Kellogg soliciting money in person, no articles or interviews described any dances, dinners, picnics, or other social functions sponsored by the organization or held in order to raise funds for the claims effort.53 Much of the evidence in the record indicates that a considerable portion of the fundraising happened through the mail. There is no available evidence in the record to support the Six Nations Clubs as sites of social activity.

Social Relationships among the Brothertown Descendants, 1930-1960

The 1930 Federal census identified 37 Brothertown descendants still living in Brothertown Township. By 1930, the descendants born in New York had all died, and many of the first generation born in Wisconsin had also died, or had moved from the area. There is no evidence that any event like Homecoming still occurred, although some individual families may have had

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53 One interview subject born in 1929 did say that, as a child, he went to a picnic that might have been a function of the Six Nations Club. However, he later stated that he was not sure if it was actually a function sponsored by that organization or some other (Baldwin 10/21/2008, n.t.).
gatherings. The remaining descendants in Brothertown may have interacted regularly because they lived in the same limited geographic area, but there is little evidence to support interaction among the people remaining in Brothertown and the dispersed descendants living throughout the rest of Wisconsin and in Minnesota from 1930 to 1960.

The 1934 Baptist Centennial

On August 7, 1934, the American Baptist Home Mission Society organized several events commemorating the centennial of the Baptist Church in Wisconsin. As the first Baptist church in Wisconsin had been founded by Brothertown Indians, the celebrations included several events detailing the history of the group. The celebration included a picnic, a historical play, and a lecture by local amateur historian Otto Heller (Oshkosh Daily Northwestern 8/7/1934; 2). Interestingly enough, there is no evidence that any of the Brothertown descendants were invited to speak or comment on the program. A minister named Coe Hayne appears to have contacted Brothertown descendant or descendants in Wisconsin, as well as representatives from the Algonquin Indian Federation, a pan-Indian group in New England whose members included members of several of the Brothertown tribes of origin (specifically the Narragansett, Niantic, and Pequot). The Brothertown descendants in Wisconsin and the New England Indians exchanged greetings with each other in 1934. The letter from New England was signed by six representatives (three Narragansetts, one Niantic, one Pequot, and one “Powhatan”), and on behalf of “. . . the Narragansett Indians of New England, gathered in Old Indian Meeting House, Charlestown Township, Rhode Island” (Williams 7/22/1934, 1). In response, the Brothertown descendants replied with greetings of their own. The letter was signed by 17 adult Brothertown descendants. One of the married couples who signed the letter, Alexander and Isabel Pemberton, had not been included on the list prepared by the 1901 Brothertown Business Committee because both were descendants of a Brothertown woman who had married a non-Brothertown man. However, both members of the couple signed the letter along with the other descendants. All of the people who signed the letter resided in Brothertown; there are no signatories from Wisconsin outside of Brothertown residents, or from Minnesota. There is no indication that people traveled back to Brothertown to take part in the event, or that this event was important to the Brothertown descendants. There is also no indication that any further correspondence occurred between the Brothertown descendants in Wisconsin and the Indians in New England.

The Brothertown descendants were photographed on or near the day of the Baptist centennial in 1934. Otto Heller, the owner of the local cheese factory and amateur historian of the Brothertowns, identified “17 of the 28 Indians living in Brothertown in August 19, 1934” in the photograph (Hammer Family Photographs 1935, 1-5). However, his list did not name the other 11 people he would have identified as Brothertown Indians living in the town who were not present for the photograph. The 1930 Federal census included all but three of the 17 residents Heller identified (Lura Kindness Fowler and Belva Mosher were not located, and Ervin Potter was not born until 1931), but also included an additional 23 Brothertown descendants, including the 10 children of Coyhis descendant William Baker. The other people and families may have moved after 1930, or were not thought of as Brothertown Indians by Heller.

Heller noted five “old timers” on his list (John Hammer, Louise Fowler, Hiram Johnson, Lura Kindness, and Francis Hammer), but several of the other people on the list and on the 1930
census were also past middle age. Eight of the 17 people in the photograph also died childless. Few Brothertown children lived in Brothertown, as most young parents moved to more economically prosperous places. The one child who was included in this photograph (Ervin Potter) left Brothertown a few years later when his mother remarried and moved the family to Fond du Lac (he and his sister eventually took their stepfather’s surname, Miller). The number of Brothertown descendants in Brothertown itself continued a steady decline as people died and no young families replaced them.

Brothertown Descendants in Fond du Lac

The petitioner submitted some information regarding the presence of Brothertown descendants in Fond du Lac from the 1890s through the 1940s (BIN Summary 83.7(b) 10/21/1995, 103). The city of Fond du Lac had attracted a number of Brothertown descendants over the years. The information submitted by the petitioner was not a residential analysis, but was a list of descendants and their street addresses over time. However, some of the names included on the list are not included in the petitioner’s database, and it is not clear if all of these people were actually Brothertown descendants. For example, the document included information on James, George, Rose, Mary, and John Stanton. None of these individuals appears to be related to the Brothertown descendants in the petitioner’s database surnamed “Stanton.” Likewise, there is no information on Thomas, George, and Rose Hoey in the petitioner’s database. There is also no information regarding several descendants who were recorded on the 1900 Federal census in Fond du Lac and on the 1901 Miller Roll (e.g., several members of the Hammer family living on Hickory Street or the Sampson family living on Merrill Street). Further, the information given spans more than 50 years, and does not indicate that there was any neighborhood or enclave composed exclusively or almost exclusively of Brothertown descendants.

The petition record included the 1939 funeral sign-in book of former Brothertown resident Ruby (Kindness) Fowler Poole (Ruby Poole 2/28/1939). The petitioner identified 12 Brothertown descendants in attendance, mostly Welch descendants. There are no attendees from any of the Minnesota Brothertown descendant families, and little representation from any of the other Brothertown descendants living in Fond du Lac.

Brothertown Descendants in Minnesota

By the 1930s, the Welch/DeGroat descendants in Redwood Falls had established a family enclave near the property belonging to LeRoy and Mathilda “Millie” (DeGroat) Welch. Interviews in the petition documentation and collected by OFA in 2008 refer to this area as “The Hill.” A map drawn by a descendant and dated approximately 1930-1945 included the homes of Leroy and Millie, six of their children and the home of Millie’s father and uncle (D. Gramentz Map 2008, 1). The enclave also included two other families of Brothertown descendants (descendants of Amelia Paul) who were also related to Millie DeGroat Welsh through the marriage of her second cousin Zenah DeGroat to Almira Paul descendant Harry Thompson. On the other side of the town lived the Alexander Rhodes family (descendants of Rachel Scippio), a family of 11 children. Rhodes’ wife, Lodusca DeGroat Rhodes, was also a cousin of Millie

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54 This family has no known descendants in the contemporary petitioner. Of the 11 children, only one is believed to have married and had children. These descendants are not members of the BIN.
DeGroat Welch. The Welches also associated with a number of Lakota Indians from the Lower Sioux Reservation in the nearby town of Morton.  

The Welches and their relatives attended the local evangelical Christian church, and also attended revivals hosted by a Lakota missionary named Goodwin (Church Gatherings 1925-1948, 3-4). One Welch son and one Welch grandson also married women from the Lower Sioux reservation. Minna (DeGroat) DeGroat (a Lucy Skeesuck descendant) left Redwood Falls with her husband and children and moved to the area near the White Earth Reservation at some point in the late 1910s or early 1920s. Other in-laws and relatives also established households across an area (approximately 10-15 miles across) in Becker County, Minnesota. The petition record contains less information about some of the other dispersed Brothertown descendants in Minnesota, including the Skeesicks. There is little evidence to indicate that these descendants communicated with other Brothertown descendants either in Minnesota or Wisconsin.

The petitioner submitted 11 interviews with members born before 1935. In 2008, OFA conducted 25 interviews, 6 with people born in or before 1935. These interviews indicate that most of the Brothertown descendants maintained relationships with their family members, but had infrequent (or no) contact with unrelated Brothertown descendants. Several people stated that their family members seldom mentioned the history of Brothertown. Some people admitted being ashamed of their Indian ancestry and hiding it from other people, but others remember being proud of it and standing up to anyone who teased them about it.

Robert Fowler (1924-aft. 2004), who would play an important part in the compilation of the Brothertown roll in the 1960s, lived in Brothertown as a small child, until his mother died and his father moved him and his brother to Fond du Lac in 1927. A number of relatives, including his uncles, aunts, and his grandmother, also lived with them in Fond du Lac. He described some gatherings of Brothertown descendants, particularly at funerals, and at some small potluck dinners people held in Fond du Lac. He also stated that he and his brother sometimes spent the summers in Brothertown, but did not name with whom they stayed when they were there (Fowler 9/21/2004, 8). He also described occasional visits from Homer Kindness, who operated his own “Indian Medicine Show” and traveled selling patent medicine (Fowler 7/22/2001, 3).

According to Fowler’s recollection, Brothertown descendants spoke of their Indian heritage when they were with other Indians. He maintained that there was discrimination against Indians...
in the city, but did not include any specific examples other than describing how he and his brother Roland had to fight other children in school when someone called his brother names because Roland had darker skin than the other children (Fowler 7/22/2001, 4).

Robert Fowler’s cousin Coral Fowler Hankwitz (1922-aft. 2004) also spent her early years in Brothertown. Her father James L. Fowler worked as a truck driver, and also operated a store he inherited from his sister Abba, the first wife of Edgar M. Dick. However, after her father’s death in 1929, her mother Ruby (Kindness) Fowler decided to move the family to Fond du Lac. Coral remembered Belva Mosher, the Niles brothers, her aunt and uncle Leura and Ira Kindness, and several members of the Hammer family all living in Brothertown and visiting her parent’s store (Hankwitz Interview 8/6/2004,5). Harlem (“Harley”) Johnson also used the store as a barber shop. Her mother also played the organ in the Brothertown Methodist Church. Later, after James Fowler’s death, his wife Ruby moved her children to Fond du Lac near her sister Eldora (Kindness) Welch. They also lived near her Ruby’s brother John C. Kindness’ family in Fond du Lac. However, although Hankwitz knew she was a Brothertown descendant, she did not tell other people out of fear they would make fun of her. Her not telling other people extended even to her children, who did not know of their own Indian ancestry until they were almost adults (Milwaukee Journal 7/28/1982, n.p.). She also did not remember people talking much about Indian issues either in Fond du Lac or Brothertown when she was growing up (Hankwitz 8/6/2004,13).

Ilene Sampson Loppnow (1923-2002) grew up in Fond du Lac. According to her interview, her father told her and her siblings that they were Indians. He sometimes drove the family out to the town of Quinney and took them to visit Union Cemetery. She remembered him tending the graves of relatives there, even though his own parents were buried elsewhere (Loppnow Interview 6/16/2002, 5). Loppnow stated that she had always been proud of being an Indian, and told other people and teachers in school, and did not recall having any problems because of it. She remembered visiting her father’s half-brother Reginald and his family. She did not remember any meetings or activities that involved a larger group of descendants.

An interview with three Bruette/Robinson siblings who grew up closer to the Stockbridge reservation described how they attended the Red Springs Mission School. According to the two sisters (born 1910 and 1912) who attended for the longest amount of time, the school had a number of Indian students from different tribes, primarily Stockbridge and Oneida. The women did not remember any other Brothertown students attending (Crowe et al. 10/6/2001, 12). In an interview conducted with some of the same siblings in 1985, one sister also remembered visiting Ida Shelley Baldwin and her family in Fond du Lac while her mother lived (Schreiber et al. 8/17/1985, 4).

58 Zebulon and Dora Welch, the grandparents of the Bruette/Robinson siblings, were both born in Calumet County in the 1860s. The couple married in 1884 in Calumet County, but divorced by 1896. Both are recorded as dying in Shawano County, but it is unclear when they moved to the area of the Stockbridge reservation. Information in the petitioner’s database indicates that both spouses had Brothertown and Stockbridge ancestry. Flora Welch Bruette Robinson, the mother of the Bruette/Robinson siblings, was born in Calumet County in 1884, but was living in Shawano County by the time of her 1909 marriage.
Brothertown Indian Nation (Petitioner #67) Proposed Finding
Criterion 83.7(b)

Ted Stephenson (1931-2009) described visiting his mother’s relatives in the Brothertown area prior to World War II. He remembered visiting Union Cemetery on Memorial Day, spending the night above Ed Welch’s blacksmith shop, and how other Indians would stay at their home in Eau Claire when they traveled through the area. Still, according to his recollections, his mother (Vera Quinney Stephenson) did not admit that she was Indian when he was a small child, preferring instead to tell people she was “a little bit Irish, a little bit Italian, and a little bit Turkish” (Stephenson 9/24/2004, 3). The children figured out that they had Indian, rather than Turkish, ancestry when they were older. He also believed that his mother would not have been hired in 1920 at a particular hotel in Madison, Wisconsin, if her employers had known she was an Indian (Stephenson 9/24/2004, 22).

A 2008 interview with Dennis Gramentz (b. 1934) described a trip he and his grandmother (Mathilda DeGroat Welch) took from Redwood Falls, Minnesota, to DePere, Wisconsin, to visit relatives. He did not give the exact year of this trip, but he did remember that he was in the second grade, which indicates that it was sometime around 1942. He specifically remembered visiting his grandmother’s namesake niece, Mathilda Hammer Johnson (daughter of Cora DeGroat Hammer), and that Mathilda’s son Cyrus Welch drove his mother to visit her relatives. He also remembered some of his grandmother’s Hammer relatives coming to visit Redwood Falls occasionally (Gramentz 2008, 27-30). Gramentz also remembered that he did not hear his grandparents use the term “Brothertown” when describing their Indian ancestry. His grandmother identified herself as an Oneida, and he did not learn of his Brothertown ancestry until he was an adult.

Brothertown Descendants During and After World War II

The petition record contains limited information regarding the effect of World War II on the Brothertown descendants. Some members served in the U.S. military, while others worked for military contractors. The petition record includes a number of newspaper clippings and photographs referring to various Brothertown descendants. Individual families appear to have maintained relationships, but the information in the petition documentation does not indicate that the group as a whole interacted at this time. While gas rationing may have accounted for declines in long-distance travel, there is little evidence in the petition that the Brothertown descendants who lived near each other in various towns or cities interacted across family lines. There is no evidence of group activity related to the war effort as there had been as there had been towards the end of World War I.

The petition record also includes little information regarding the Brothertown descendants after the war. Some extended families appear to have kept in touch with each other, but there is little evidence during this period to indicate that people resumed or began visiting across family lines. The 1952 funeral book of John Coyhis exhibited the broadest spectrum of Brothertown

59 The Gramentz interview also mentions the Boyer family, but says little about them. The petitioner’s genealogical database includes information about some Boyers descended from Lucy Skeesuck who were also related to Mathilde DeGroat Welch.

60 Gramentz’s cousin remembered that her grandfather identified himself as a Narragansett (J. Schadewald 10/16/2008, n.t.).
descendants, and included his nephew Harold Coyhis, several Tousey nephews, and a number of
Welch descendants (all distant cousins of the deceased and each other). There are no
representatives from other local Brothertown families such as the Fowlers, Niles, Johnsons, or
Sampsons, and none from the families living in Minnesota (John Coyhis Funeral Book 1952, 1-8).
Among the Minnesota DeGroat descendants, an obituary and a wedding book submitted by
the petitioner both name immediate and extended family members in attendance at these events,
but do not indicate that a larger cross-section of Brothertown descendants (either other
Minnesota residents or Wisconsin descendants) attended these events, (DeGroat Wedding

These siblings, born in 1947 and 1949, remembered their parents taking trips and visiting many
people to collect information about the Brothertown Indians (Tousey and Tousey 10/19/2008,
25-29). Some of the information the Touseys gathered is in the record, but there are no
interviews or interview notes attributed to their work. Many of the Tousey documents were
donated to the Wisconsin Historical Society. The petitioner may wish to research the Tousey
papers to see if there are additional interviews or other useful documents in them.

During the 2008 site visit OFA acquired a list of phone numbers and addresses compiled by
Theresa Kindness Fowler. This document (which also includes some genealogical information
on the Fowler family) is undated, but was compiled after the 1953 death of her son Hugh (T.
Fowler 1953, 3). The list includes some other identifiable Brothertown descendants, which
indicates that she was in contact with these people. However, they were mostly her relatives.61
The list does not indicate that she was in communication with a larger cross-section of
Brothertown descendants. However, one note on the list mentions attending a “group circle” at
the home of Mrs. George Baldwin [Myrtle (Mathers) Baldwin], the one Brothertown descendant
on the list who was not a close relative of Theresa Fowler. The petition included no other
information about these “group circles” were, or if they included other Brothertown descendants.

By the 1950s, very few Brothertown descendants remained in Brothertown itself. A 1955
newspaper article about Herman Niles describes him as the last full-blooded Brothertown Indian
in the village, and noted that his visitors, aside from an occasional niece or nephew, consisted
mostly of other non-Indian Brothertown residents (Sebora 7/1955, 3).

The Brothertown Methodist Episcopal Church, which has been a very important institution
through the 1920s, appears to have lost both Indian and non-Indian members over the years. The
petition record includes no information about the church after the 1920s and before its eventual
demolition in 1967. In a 2008 interview, one member of the group stated that the bell, which had
hung in the church’s belfry, had been taken from Brothertown to the Oneida Methodist Church
on the Oneida reservation, where it is still in use today (OFA, 10/16/2008, 1). There is no
information in the record indicating that the two congregations had ever traveled to visit each

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61 Identifiable Brothertown descendants on the list include Mrs. Daisy Fowler Hicken (Fowler’s daughter), Coral
(Fowler’s niece), Robert and Roland (Fowler’s grandsons), Lloyd Kindness (Fowler’s nephew), and Mrs. George
Baldwin (Myrtle Mathers Baldwin) (Fowler’s distant cousin). The list also includes “Minnie and Rose Kindness,”
but they are not included in the petitioner’s database.
other. There is no information in the record indicating that Brothertown descendants from the Brothertown area took part in any type of dedication or installation ceremony.

Brothertown Descendants, 1964-1979

In 1964, the Indian Claims Commission (ICC) settled the claims of the New York Emigrant Indians. There is no evidence that the Brothertown descendants took part in the series of court cases which led up to the resolution of the case (see “The Indian Claims Commission” under criterion 83.7(c)), but the Brothertown descendants were deemed eligible to take part in the distribution of the $1.3 million award. Brothertown descendant Robert Fowler, an attorney in Fond du Lac, organized a series of meetings in Fond du Lac in order to inform those eligible descendants of the deadlines for filing claims forms. Fowler submitted a series of lists of other descendants to the Green Bay Agency, which were mostly composed of Fowler’s relatives (Fowler 9/19/1967, 1; Fowler 12/4/1967; Fowler 3/1/1968, 1-2). Eventually, he agreed to help with the preparation of a roll of Brothertown descendants who met the one-quarter New York Emigrant Indian blood degree established by the ICC.

There had not been a roll of Brothertown descendants since the 1901 Miller Roll, and there is limited information in the petition regarding how the 1967 Claims Roll was compiled. There is nothing to indicate that the Brothertown descendants established a governing body of any sort to handle the applications or to notify people out of state about the claims. The attention from a number of newspaper articles may have made other people aware of the claims action, as well as word of mouth. According to interviews with Fowler, a number of people whom he had known for years, but had never known to be Brothertown descendants, came forward to file for their portion of the claims settlement:

> We did not know how many Indians were living in Fond du Lac County. I put out an ad, because there was some publicity about this grant [sic], going to the Brothertown Indians, you had to be at least 25 percent. I never saw so many Brothertown Indians come out of the wall in my life. Because they all ran through my office because I filled out their applications. People that I knew for years, I didn’t know they were Indian. People would not tell other people that they were Indian. When they found out there was money available, they came out of the closet, literally. I thought that was really quite interesting. (Fowler 7/22/2001, 4)

Fowler’s statement indicates that not only did many people not tell outsiders that they were Brothertown descendants, but that many descendants did not associate with each other as Indians.

The Brothertown descendants completed their roll in 1968, but did not receive their claims payments for until 1974 because of internal disputes among the Stockbridge (see discussion under 83.7(c)). There is no evidence in the petition to indicate that members of the group began associating more with other descendants. The documentation in the record indicates that the group held its first meeting to organize the descendants as a “tribe” on January 3, 1980 (BIN Minutes 1/3/1980, 1), and the record provides little information regarding what the group as a
whole was doing during the six years between the end of the claims case and the beginning of the effort to apply for Federal acknowledgment.

The Brothertown Petitioner, 1980-Present

Definition of “at present” under Section 83.8 (d)(2)

Under 83.8(d)(2), a petitioner only has to demonstrate that it meets the definition of community “at present”. The definition of “at present” varies for groups evaluated under section 83.8(d)(2), as each case requires researchers to define a period tailored to the petitioner’s unique history that shows important social processes. Since the Brothertown Indian Nation (BIN) petitioner formally organized in 1980, this PF will describe social interaction and processes from that year forward to determine whether or not the evidence in the record is sufficient to demonstrate the petitioner meets the requirements of this criterion. Some discussion concerning the 141 years between the 1839 Act which disbanded the historical Brothertown tribe and the 1980 organization of the group is necessary to describe recent social processes and evaluate the petitioner’s arguments about the present, but the “present” in this case pertains only to the period since 1980.

Petitioner’s Composition and Residential Analysis

The first membership list submitted by the petitioner was dated 1996, 16 years after the group organized. Although a newspaper article indicated the group first used the 1967 Claims Act Roll to contact potential members (Register 12/1/1980), there is no evidence whether or not the group had its own membership list prior to 1996. The petitioner’s 1995 petition submission also included a membership figure of 858 members (BIN 1996, 109), but did not include a 1995 membership list or explain how it obtained this figure.

The size of the petitioner’s membership has more than tripled since its first stated membership numbers in 1995. The initial petition narrative was dated 1995 but not submitted to the Department until 1996. It stated that the group had 858 members (BIN 1996, 109). In 1997, the membership list submitted by the BIN identified 2,276 members, an increase of 1,418 members. The 2005 narrative stated that the organization had 2,891 members (BIN 2005, 84), while the membership list submitted during the same year identified 2,852 members. The membership figures listed in the petitioner’s narratives do not coincide with the number of members named.

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62 The group originally organized under the name “Brotherton Indians of Wisconsin” (BIN Minutes 1/3/1980, 1). However, it also used the name “Brotherton Indian Nation” (Fond du Lac Commonwealth 6/21/1981, 1) and “Brotherton Tribe of Wisconsin” (Wassaja 1981, 5). The group formed a non-profit corporation called the “Brotherton Nation, Inc.” in 1982. The Oneida Tribe of Wisconsin and the Stockbridge-Munsee both referred to the “Brotherton Tribe” in support resolutions in 1983 and 1985 respectively (Oneida Tribe of WI Resolution 5/6/1983, 1; Stockbridge-Munsee Resolution 8/20/1985, 1). By 1987, the group had changed the spelling of the group’s name from “Brotherton” to “Brothertown” in its governing document, and stated that the official name of the group was “Brothertown Indian Nation.” However, the same document that declared that the group’s official name was “Brothertown Indian Nation” was titled “Amended Articles of Constitution and By-Laws of the Brothertown Indians of Wisconsin” (BIN Constitution 11/23/1987, 1).
on the petitioner’s membership lists. While the 39-member difference between the 2005 membership list and petition narrative may be explained by errors in record-keeping, the available evidence does not explain the apparent increase of more than 1,400 people in the two years between 1995 and 1997.

The petitioner did not include a residential analysis of its members on its most recent membership list. OFA performed an analysis of the June 21, 2008, membership list submitted by the petitioner. According to this list, the group has 3,137 living members. Of those 3,137 members, approximately 21 percent (669 members) had no current address listed. Approximately 41 percent (1,276 members) gave addresses in Wisconsin. Ten percent of the membership (305 members) gave addresses in Minnesota. The remaining 28 percent (887 members) gave addresses across the United States and Canada, with four members currently living in China.

These numbers reflect that a substantial proportion of the membership has lived outside of Wisconsin since the petitioner submitted its first membership list to the Department. According to the petitioner’s 1995 narrative, 42 percent of the group (361 members of a total of 858) lived out of state at that time (BIN 1996, 109); by the time of the group’s 2005 narrative, the membership had increased to 2,891, with approximately 60 percent of members living outside of Wisconsin (BIN 2005, 84). The total out-of-state portion of the petitioner’s 2008 membership list totals 38 percent of the membership (1,192 members out of a total of 3,137), or 48 percent of the members with known addresses. Therefore, it appears that having a large percentage of members living outside the State has been a characteristic of the group since it began compiling membership lists.

The 1,276 members on the 2008 list who live in Wisconsin gave addresses in a total of 208 cities and towns. The State itself spans 310 miles by 260 miles and members appear to live in towns and communities all across the State. The largest concentration of members is in Fond du Lac and the adjoining city of North Fond Du Lac (149 in Fond du Lac proper, 18 in North Fond du Lac, 167 members total). Fond du Lac and North Fond du Lac account for 5 percent of the membership. According to the U.S. Census Bureau, the city of Fond du Lac had a 2006 population of approximately 42,000, and the addresses on the petitioner’s membership list do not indicate that the members reside in a particular neighborhood or area of the city, or that they form a settlement of any kind.

The residential pattern of the group’s membership can only be described as approximate because addresses were missing for about a fifth of the membership. However, analysis of the 2008 membership list does indicate that the majority of the group’s members do not live within a geographic area where they can easily maintain social contact. Nearly half of the members with known addresses do not live within the state at all, and those who do live in Wisconsin are located across a very large area. The widely distributed membership found for this petitioner does not allow a presumption that the members are in close contact with one another and interacting intensively, as would be the case if they lived in a village or neighborhood. As it does not appear that social contact is residentially based, the petitioner needs to demonstrate how other methods of maintaining social contact are used. The petitioner must also provide the
missing addresses for the FD (see discussion under 83.7(e)), which may result in a new residential analysis.

Social Interaction

According to documents in the record reviewed for this petition, there is little evidence to determine how much interaction the membership at large had (however it was defined prior to the 1996 membership list) during the BIN’s initial years. Other than the mention of the activities of a limited number of people in newsletters and meeting minutes, the record contains little indication of how or if the group (or a representative cross-section of the group) interacted during the period from 1980 to 1996. For example, OFA located 21 sign-in sheets from monthly meetings held between March 1982 and May 1984. The largest attendance at any of these meetings was 38 people (including minors, non-Indian spouses, and visitors) and the average attendance was 26 people. At this time, many of the attendees were members of the Sampson, Tousey, and Bruette/Robinson families. Individual members of other families, such as the DeGroat and Skeesick families, also attended. The petitioner may wish to do additional analyses of other meeting minutes, newsletters, and other documents which name participants in the group’s activities to demonstrate which families and which individuals were interacting during the early years of the organization, whether in meetings or in other ways.

The group sponsors two major social events each year, the Annual Picnic and the Annual Homecoming. The group instituted the Annual Picnic in July 1981, soon after the group formally organized in 1980. The petitioner submitted sign-in sheets for 15 picnics between 1981 and 2007, and included attendance totals for seven others in newsletters. There are also four years (1991, 2003, 2005, and 2006) for which there is no picnic attendance information. Attendance figures are approximate because some people signed in as family units rather than as individuals, and because the sheets did not differentiate between members and non-member spouses; some attendees may not have signed in at all. The largest attendance shown on any of these records was 169 in July 1985, and the average attendance at these events was 82. The petitioner may wish to provide analysis of the composition of the Annual Picnic for the FD to determine whether the attendees were representative of the entire group (i.e., members from a number of family lines, including a number of those out-of-state residents) and if a predominant portion of the group was represented by attendees from a number of families.

The group re instituted the Brothertown Homecoming in 1983, three years after the group formally organized. This was not a continuation of the “Homecomings” that the Brothertown descendants had attended during the early 20th century, but was a reintroduction of the reunions after more than 50 years. There is no evidence in the record to indicate that the Brothertown descendants held any such gatherings during the interim. The petitioner submitted 19 sign-in sheets for this event, for most of the years between 1983 and 2007 (1983, 1984, 2003, 2005, and 2006 were not included). As with the attendance records for the picnic, attendance on some dates is approximate, as people signed in with the notation “John Doe and family,” without listing the names of the family members. Also, the sign-in sheets do not differentiate between members and non-Indian spouses or guests. The BIN’s initial petition stated: “The tribe holds an annual reunion at a state park near the old reservation, not far from Fond du Lac, that attracts several hundred tribal members …” (BIN 1996, 115), but none of the sign-in sheets included in
the petition submission for the years before 1995 indicated more than 130 people (members and non-members) in attendance. The group’s January 2006 newsletter stated, “We had a good turnout (around 250 people)…” for the group’s 2005 homecoming (BIN Newsletter 1/2006, 4), but the sign-in sheet for that event was not located in the petition documentation. The highest attendance recorded at any Homecoming on the 19 sheets submitted by the petitioner was 181 attendees in 1999, and attendance averaged 84 people over the years.

According to the members interviewed in 2008, Homecoming has incorporated elements of a family reunion with a large potluck luncheon since its reintroduction in 1983. The group has also included educational and photographic exhibits about the history of the group. In recent years, however, some members who have been involved in pan-Indian activities in the region have introduced more “pow-wow” type elements to the gathering by including drum groups, vendors, and dancers. The 2008 Homecoming, which was attended by OFA staff, included the veterans’ organization from the Mohican (Stockbridge-Munsee) reservation, three drum groups from other tribes and organizations, and several vendors of Indian clothing and jewelry. The group also had a photographic and genealogical exhibit featuring information about the history of the Brothertowns in Wisconsin, as well as a number of goods for sale bearing the group’s logo. A number of members volunteered ahead of time to set up the hall, staff the registration and crafts tables, organize and run the kitchen, and clean up the facility when the event was over. The petitioner may wish to submit an analysis of the attendance of the Annual Homecoming over the years to demonstrate which members of the group have interacted during Homecoming, and to demonstrate what portion of the group was represented at these events by a wide cross-section of attendees from a number of Brothertown descendant families.

In addition to describing the reintroduction of the Annual Homecoming, the petitioner included some discussion of family reunions held by individual families. The petitioner maintained in its 2005 petition narrative that the family reunions held by some of the extended families in the membership had their roots in the Homecomings that the Brothertowns had held during the early 1900s (BIN 2005, 79). However, the petition documentation did not include any information to support this assertion. The various family reunions are organized by the individual families. Non-related Brothertown descendants do not attend reunions hosted by various individual families on the basis that they are all Brothertown descendants, though there is some indication that a few family reunions have recently extended invitations to other Brothertown descendants. The evidence indicates that the reunions involve only members of particular extended families, rather than being broadly based among several families.

The materials included in the petition record indicates that some members maintain social contact through annual meetings and picnics, regular council meetings, speaking with family

63 Not all members of the group were happy about the new “Indian” elements of Homecoming:

WSB: Has homecoming changed from what you remember attending your first one?

Mr. Stephenson: Well, we all came here, and we talked, and basically danced, and somebody introduced his family, and somebody introduced his family. But you know, the other day now, they invited down the drums, and the whole thing was about this drumming. . . That’s not the homecoming (Stephenson 10/21/2008, 37).
members, and reading the group’s newsletter (BIN 2005, 88). The group maintains a website which is not directly referenced in the 2005 or 2008 narratives, but was referred to in interviews. The site includes information that group members can access. The group has addressed the difficulty of having such a far-flung membership by holding meetings in different locations across the State, such as in Gresham and Milwaukee, and in Minnesota. The group’s many committees have introduced members with common interests to each other, and some people who first met in the early 1980s are now very well-acquainted with each other. An example of this is the Brothertown Crafts Committee, which began in 1994 as an outgrowth of the Brothertown Powwow Committee, and has continued producing craft items to sell at powwows, gatherings, and in the storefront portion of the group’s office in Fond du Lac. Members and their families produce items such as beaded jewelry for sale, and the proceeds benefit the group. Some of the work is done when members gather together and work on projects, while other work is done by individual members who then submit the items by mail, through an intermediary or in person the next time the contributors are in the area. Members also volunteer to staff the table and sell the merchandise at various events. This economic enterprise does benefit the group as a whole, but the information included in the record is insufficient to determine whether or not a significant portion of the membership expresses support for the crafts enterprise and feels it is important to the group.

The data in the record indicate that the group has taken a number of steps to involve as many members as possible, considering that members are spread out over Wisconsin, Minnesota, and the rest of the United States. Hosting events such as the group’s various fundraising activities and bus trips to the East Coast also gives members a chance to interact with each other. However, the information in the record is insufficient to demonstrate that a predominant portion of the members actually use these opportunities to associate with other members. The information in the petition indicates that a small percentage of the membership is very involved with the events of the group, but that a much larger percentage has little involvement with the group or with the involved members. There is little evidence in the record of broad interaction among non-related or distantly-related individuals. The group’s ability to organize a small portion of its members for events such as the Annual Picnic, the Annual Homecoming, or fundraising events is insufficient to demonstrate that a predominant portion of the group interacts through these activities. The information available in the record is not sufficient to determine whether the group’s crafts business is supported by a significant portion of the membership. The information in the petition regarding family reunions is insufficient to indicate that family reunions held by Brothertown descendants are distinct from family reunions held by non-Brothertown descendants, or that a significant number of nonrelated Brothertown descendants attend the reunions held by other Brothertown families. All of evidence taken together indicates that the petitioner does not satisfy the requirements for criteria 83.7(b).

64 Over the years, the group’s committees have included a fund-raising committee, history committee, membership committee, enrollment committee, grant-writing committee, crafts committee, legislative action committee, “Sunshine Committee” (which sends get-well cards and flowers to ailing members), and many others. Members also formed the Brothertown Circle in 2001 to study various aspects of the culture of the tribes which combined to form the Brothertown tribe (Brothertown Circle 2002, 2-4).
Interview Data

The BIN petitioner submitted 11 complete interview transcripts and 3 incomplete interview transcripts.\textsuperscript{65} The petitioner also included several oral histories written by members. OFA staff conducted 24 formal interviews (some individual, some in small groups) with 30 individuals during the 2008 site visit. In addition to interviewing 23 members, OFA also interviewed 2 non-Indian spouses, 3 members of the Mohican (Stockbridge-Munsee) tribe (1 of whom had formerly been enrolled with the BIN), 1 member of the Oneida Tribe of Wisconsin, and 1 former member of the BIN. OFA staff also took notes during several informal conversations, including some at Homecoming.

The 23 members interviewed by OFA ranged in age from 13 to 84, and included 14 females and 9 males. When determining who to interview and what topics to discuss, OFA staff endeavored to take in a geographic cross-section of the group, including lifelong residents of Fond du Lac and representatives from the major settlement areas in Minnesota (Redwood Falls and the Long Prairie vicinity). OFA also attempted to interview a variety of people with differing levels of participation and involvement in the group as demonstrated in the group’s petition documents. OFA staff were unable to interview any members who grew up in the Gresham area, but did interview two Stockbridge Mohican members who had considerable knowledge of the Brothertown descendants who lived in that area. OFA staff also took notes during a long car trip with a resident who had grown up near the Oneida reservation.

The information in the interviews indicates some of the current relationships among members are based on the relationships established years before the creation of the formal organization. The best example was that between the descendants of Vera (Quinney) Stephenson and George and Myrtle (Mathers) Baldwin. Vera Stephenson “stood up” for George and Myrtle when they married in 1925, and afterwards Vera and her family remained close to the Baldwins. Their children were close in age and also remained close as they grew up; (Baldwin 10/21/2008, n.t.). Frederick (“Fred”) Baldwin (b.1929) and Richard (“Dickie”) Welch (b.1930) also grew up in Fond du Lac during the 1930s and 1940s, and went through grade school and high school together. Fred Baldwin also bowled in the same league with Herbert Shady, Jr. (a Potter descendant)\textsuperscript{66} and also knew Robert Fowler, Sr., and Ray Burgess (b.1937) (a Fowler/Skeesuck descendant) from bowling, although he did not indicate that the Brothertown descendants ever organized their own bowling team.

Although such relationships do exist, they appear to be the exception rather than the rule. Most of the relationships that exist now appear to have developed recently as the result of membership

\textsuperscript{65} The incomplete interviews in the petition are Wilson 8/12/2002, Mattern 9/23/2004, and Ezold and Ottery 5/19/2003. Additionally, the petition materials include citations to fieldnotes by Dr. Jack Campisi, one of the petitioner’s researchers. The field notes themselves, which reference interviews conducted in 1986 (BIN 1996, 113), were not included in the petition documentation. The petitioner is encouraged to submit these materials for consideration for the FD.

\textsuperscript{66} Baldwin, Fowler, and Burgess were born within 13 years of each other. Herbert Shady, Jr., is approximately 25 years younger than Baldwin. This indicates that Baldwin identified the men he knew from the bowling league over the course of many years, not simultaneously.
in the formal organization and the group’s sponsoring of many social events. People who met through the group and discovered that they live near each other in cities or towns distant from Brothertown now remark that they do see each other informally, as do some people who have become involved in pan-Indian activities and who participate in the regional pow-wow circuit. Others who participated in the group-sponsored 1999 or 2003 bus trips to the East Coast to visit the founding communities in New York and New England also formed relationships with members they had not known before. Some people refer to other members as their “relatives,” which is technically true, as many of the members of the group are distantly related to each other. However, many of these relationships are not based on informal familial knowledge, but developed when people formally studying their genealogy learned that other members of the organization shared a common ancestor with them. The information in the record does not indicate whether members of the group who currently interact have done so throughout the time period defined as “at present.” That is, there is insufficient evidence to show if the members who currently know and associate with other members have done so since the early 1980s, or if these relationships are of a more recent origin.

Some members have very strong kin and social ties to members of federally-recognized tribes, especially the Mohicans of the Stockbridge-Munsee Band and the Oneida Tribe of Wisconsin, which long predate their involvement with any group of Brothertown descendants. A former enrolled member of the BIN (b. 1942) interviewed by OFA is now an enrolled member of the Stockbridge-Munsee. She became involved with the Brothertown in the early 1980s when the group was organizing (Brower 10/23/2008, 59). However, she and her siblings enrolled with the Mohicans sometime after 2005 when the rolls of that tribe reopened. Some of her relatives who had always been enrolled with the Stockbridge Mohicans also encouraged her to enroll with the tribe. However, her children and grandchildren are still enrolled with the Brothertown petitioner.

Another Brothertown member (b. 1960) grew up near the Oneida reservation, where a number of his family members lived. His grandmother was an involved member of the Oneida Methodist church, and many of his family members are buried in the Oneida cemetery. His family regularly associated with other Brothertown descendants who lived on or near a particular portion of the Oneida reservation, as well as with Oneida families.67 He described taking his grandmother for occasional visits to other Brothertown descendants in the Quinney/Stockbridge area (where his grandmother’s mother had grown up), but he had regular contact with the Brothertown descendants and the Oneida tribal members who lived closer to the Green Bay and DePere area (OFA 10/16/2008, 1-3).

One member (b. 1960) whose mother’s family are enrolled members of the Stockbridge Mohican tribe stated that she grew up visiting her mother’s relatives near the Stockbridge reservation, and that these relatives also visited them in Milwaukee (Gralewicz 10/15/2008, 8-9). However, she also stated that she had grown up thinking of herself as a “generic Indian” or “Pohican”

67 An interview with a member of the petitioner who grew up near the Oneida reservation indicated that most of the Brothertown descendants who settled there made their homes on the southern end of the reservation (OFA 10/16/2008, 1). For the FD, the petitioner may wish to describe how the Brothertown descendants established themselves in that particular area, and also discuss whether the Brothertown descendants were regarded as a distinct group by the Oneida. Likewise, the petitioner may also wish to explore whether or not the Brothertown descendants living in the vicinity of the Stockbridge reservation were regarded as a distinct group by the Stockbridge Mohicans.
(meaning Polish-Mohican), and that she did not become involved with the Brothertown group until approximately 15 years ago. The family had attempted to enroll the children with the Stockbridge Mohicans a number of times, but were prohibited by the tribe’s blood quantum restrictions. However, in the mid-1990s, her great-aunt told her that she and her siblings could get on the Brothertown rolls (Gralewicz 10/15/2008, 6, 12-13). She has remained connected to the Stockbridge Mohican members of her family and continues to visit her friends and relatives on the Stockbridge reservation.

A number of people interviewed stated not only had they not known other Brothertown descendants before the formal organization of the group, but they had little idea they were Brothertown descendants themselves. Five of the 23 members interviewed by OFA stated they had known they were Indian, but not Brothertown. One woman (b.1933) stated she had never heard of “Brothertown” until she was an adult, and that her grandmother always claimed Oneida ancestry. Her grandfather, a Skeesuck descendant, claimed Narragansett as his ancestry, rather than Brothertown (J. Schadewald 10/15/2008, n.t.). Her cousin, who was also interviewed, grew up with the same grandparents and remembered his grandmother claiming Oneida ancestry, but did not learn about Brothertown until he was an adult (Gramentz 10/15/2008, 16-17). Another member (b. 1939) stated that her maternal Brothertown grandfather died when she was very young, but she remembered her mother describing visits from his half-sisters from Stockbridge, so she thought that he was also Stockbridge (these sisters had a Stockbridge mother, while his mother was a non-Indian) (Waldvogel 10/17/2008, n.t.).

Another member (b. 1947) grew up in Minnesota knowing she was Indian, but did not learn what tribe until she began to do research in 1976. Her uncle had learned about the Brothertown in college, so she began to do research after that. She also stated that she had not made the acquaintance of many of the other Brothertown descendants from Minnesota until the group began to hold meetings in Long Prairie in 1992 (Kramer and Ryan 10/22/2008, 15-23). Another member (b. 1935), who was interviewed by a fellow member of the petitioner on a previous occasion, also stated she had been unfamiliar with Brothertown for many years. In a 2002 interview, she stated that her grandmother identified herself as an Oneida, but when her father tried to enroll with the tribe, he was informed he did not qualify as a member because his Oneida ancestry was not through the maternal line. However, an Oneida man encouraged him to research his Brothertown ancestry, and this research eventually resulted in the family becoming involved with the formal Brothertown organization (Andler 8/16/2002, 3-5). All of the above examples demonstrate that social relationships between members developed after participation in the group, rather than group activities having developed from existing relationships.

The interview data suggest the relationships between group members at present has developed from the expansion of the formal organization. Members, while able to demonstrate genealogical descent from the historical tribe, had little knowledge of each other before the establishment of the organization, and a significant number also had little knowledge of their Brothertown ancestry. Some had (and have) much deeper social and kin ties to other federally recognized tribes than to any group of Brothertown descendants. Information obtained from the interviews does not demonstrate that the relationships among members of the group have been consistent across the period defined as “at present” (1980-2009). The organization did not formalize existing activities but has fostered some interaction and brought some relationships
into existence. Several of the interview subjects are now very active in and/or have held elected office in the organization, but the evidence indicates that much of their knowledge and involvement with other members has come through their involvement with the formal organization.

**Conclusion**

The overall evidence of the group’s social interaction is insufficient to satisfy the requirements of criterion 83.7(b)) from 1980 to the present. There is no available evidence in the record that a community existed in 1980 composed of the same people currently enrolled with the petitioner. The social contact among members appears to have resulted from membership in the formal organization, rather than the formal organization being the result of informal interaction between members during the early 1980s.

The character of the current group appears to be that of a descent group with some active participants, but with a much larger portion of members appearing to have little to no interaction with each other. The group has the ability to organize some members to help with an annual function such as Homecoming, and to participate in some local fund-raising events, but there is insufficient evidence of informal interaction or social relationships among a predominant portion of members throughout the rest of the year. The social and cultural elements described in the documentation are of recent introduction, and there is not enough information to indicate that these events are of more than symbolic value to the group as a whole, rather than to a few involved members. Although the group has arranged events that allow members of the group to congregate, the petitioner has not demonstrated that a predominant portion of its membership takes advantage of these opportunities to associate with each other.

Fond du Lac, the city with the highest number of Brothertown descendants, has not been demonstrated to have served as a “core” for this highly dispersed group. Most interaction among descendants who live there appears to be among family members, or is the result of non-related Brothertown descendants do not attend reunions hosted by various individual families on the basis that they are all Brothertown descendants. Only a few members who live in or near the city attend the same church, live in the same neighborhoods, or associate with each other outside of the group’s formal activities. Further, there is no evidence that the members in Fond du Lac interact with members of the group outside the city any more than members in other towns or cities across the State. Therefore, the evidence in the petition record does not indicate that members who live in Fond du Lac engage in significantly more informal social interactions with other Brothertown members than do the dispersed members who live throughout Wisconsin or the rest of the United States.

The petitioner has not demonstrated that it meets the requirements of criterion 83.7(b) as modified by section 83.8(d)(2) which requires the petitioner to demonstrate that a predominant portion of the members comprise a distinct community “at present,” but does not require the group to demonstrate its existence as a community historically. The petitioner does not meet criterion 83.7(b) “at present” and therefore does not meet criterion 83.7(b) as modified by 83.8(d)(2).
Criterion 83.7(c)

83.7(c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

83.8(d)(3) The group meets the requirements of the criterion in § 83.7(c) to demonstrate that political influence or authority is exercised within the group at present. Sufficient evidence to meet the criterion in § 83.7(c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identification, by authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise political influence or authority, together with one form of evidence listed in § 83.7(c).

Introduction

The evaluation under this criterion for petitioners with previous Federal acknowledgment as an Indian tribe may be modified for the historical period between the last date of Federal acknowledgment and “at present.” The petitioner must still demonstrate that it exercises political influence within the petitioning group for the time period “at present.” Section 83.8(d)(3) provides previously acknowledged petitioners the opportunity to meet this criterion for the historical period prior to the present with a reduced evidentiary burden. The evidence in the record for this petition, however, does not include the type of evidence that is sufficient to meet the modified requirements of section 83.8(d)(3) for this historical period. When a petitioner is not able to utilize this reduced evidentiary burden, the regulations (§83.8(d)(5)) provide that it may demonstrate alternatively that it meets the unmodified requirements of criterion 83.7(c) from the date of last Federal acknowledgment until the present.

This criterion requires the petitioner to demonstrate it has maintained political influence or authority over its members. In this case, such political influence must be demonstrated for the period since last Federal acknowledgment in 1839. In general, the evaluation of the materials in the record looks for evidence the petitioning group has had an internal group political process that involves a bilateral political relationship between leaders and members of the group. The evaluation of this petitioner considers whether the petitioning group was able after its loss of Federal status to maintain political influence over its members through control of local civil government, especially whether it was able to use public office to govern a population mostly of Brothertown Indians in the township created from the former Brothertown Indian Reservation. In addition, the evaluation considers whether this petitioner is able to benefit from transfer provisions in the regulations, in section 83.7(c)(3), with evidence that satisfies section 83.7(b)(2). Based on the evaluation of that evidence in the discussion of criterion 83.7(b), the petitioner does
not have such evidence for any time period and therefore must present direct evidence of the
group’s political influence over its members since 1839.

The evidence in the record indicates that after 1839 the Brothertown descendants organized
almost exclusively to pursue various claims against the Federal Government. There is little
evidence in the record of informal leadership or political influence for other purposes among the
Brothertown descendants who remained in and around Calumet County. The Methodist Church,
although attended by many local Brothertown descendants until the beginning of the 20th
century, does not appear to have served as a site of political mobilization. Brothertown
descendants participated in the pan-Indian “Six Nations” claims organization in the 1920s and
1930s and in the New York Emigrant Indians claims only after an award in 1967. Little
evidence in the record demonstrates any group political leadership during that time, either formal
or informal. It was not until the 1980s when the current petitioner organized that the
Brothertown descendants formed a governing body that addressed issues such as providing
financial aid for members wishing to attend college. Although the record indicates that the group
currently has a governing body that provides some services for its members, this activity is of
recent origin and appears to be the result of the group’s establishment as a formal organization.
Therefore, the petitioner does not meet criterion 83.7(c) from 1839 to the present

The petitioner’s presentation for this criterion since 1839 is found in three narratives submitted in
examples of contracts with lawyers to prosecute Brothertown and New York Indian claims cases
during the 19th century, a claims case of the Montauk Indian tribe in the late 1910s, the efforts of
“Six Nations” clubs from the 1920s to early 1930s to pursue various claims, and activity between
1967 and 1974 to create a judgment list as a result of an Indian Claims Commission award. The
petitioner notes there was “little overt activity” in the 1930s and 1940s (BIN 1996, 124) and
mentions no specific activities in the 1950s. The petitioner’s narrative of these historical events
offers no explanation of how any group decision-making process worked in these various claims
activities, and little discussion of any group activities involving political issues other than claims.
Its narrative provides a very brief description of the petitioner’s current organization since 1980.
The evidence in the record relating to the events mentioned by the petitioner is evaluated in the
following sections.

Evaluation under Section 83.8(d)(3)

A petitioner with previous Federal acknowledgment may meet the requirements of this criterion
with a reduced evidentiary burden for the historical period prior to “at present” if it can
demonstrate that authoritative, knowledgeable external observers identified leaders or a
governing body of the petitioning group on a substantially continuous basis since the date of last
Federal acknowledgment. No evidence was submitted by the petitioner or found by OFA
researchers to demonstrate that any outside observers knowledgeable about Brothertown Indians
or the petitioning group have identified a series of recognized leaders or a governing body of a
Brothertown group from 1839 to the present. Therefore, the petitioner does not meet the
requirements of criterion 83.7(c) as modified by section 83.8(d)(3) for the historical period prior
to “at present.” In this circumstance, when the petitioner is unable to benefit from this reduced
evidentiary burden, the acknowledgment regulations provide in section 83.8(d)(5) that the petitioner may be evaluated alternatively under the provisions of criterion 83.7(c) without modification by section 83.8(d)(3). The evaluation of the petitioner for this proposed finding will ask whether it meets the requirements of criterion 83.7(c) since the date of last Federal acknowledgment in 1839.

Evidence Relevant to Political Activity and Influence, 1839-1904

The Brothertown Political Process at the Time of the Act of 1839

Evidence in the record indicates that the Brothertown Indian tribe in Wisconsin had an existing process of governance prior to 1839 that included tribal “town meetings” and an official known as a “town clerk” who kept a record book known as the “town book.” The Wisconsin Supreme Court in 1885 cited evidence that a tribal “town meeting” had been held in September 1835 to approve a tribal allotment of land on the Brothertown Indian Reservation (Fowler v. Scott 1885, 718-719). The Act of 1839 required the Brothertown board of commissioners authorized by the Act to deposit a copy of its preliminary report and map of land allotments with “the town clerk of said tribe” for public inspection (U.S. Congress 3/3/1839, sec.5). Guion Miller, who prepared the Brothertown claims roll in 1901, noted in 1903 that he had found a list of Brothertown allottees that had been copied from the original “Town Book” of the tribe (G. Miller 9/3/1903). This evidence does not reveal that the tribe had a governing body other than the town meeting or political leaders other than a town clerk, although other leadership positions—such as “peacemaker” and “marshal”—had existed within the tribe in New York.

The Act of 1839 authorized the adult, male members of the Brothertown Indian tribe to elect a board of commissioners to allot the lands of their reservation (U.S. Congress 3/3/1839, sec.3). The Federal official who supervised that election reported that the tribe had conducted a tribal election and elected five of its members to serve as commissioners on that board, identifying them as Randal Abner Sr., Charles Anthony, Thomas Commuck, Alonzo Dick, and David Johnson (Horner 7/2/1839). The commissioners stated in their report to the President of the United States that they were chosen in a tribal election held on July 1, 1839, at which a Federal official presided (Anthony et al. 10/-/1839). The board’s work was aided by the previous allotment of land, but the commissioners indicated in their report that they had to resolve two difficult issues. The board decided to make equal assignments of land to all members without including inherited shares that would lead to unequal tracts, and it decided against providing land to women who had married outside the tribe. This elected tribal board of commissioners carried out the duties required by the Act of 1839 by assigning lots of land to members, preparing a report with an accompanying list and map of the allotments, and submitting the report to the President and other officials.

The available evidence in the record indicates that at least 12 men on the 1839 Allotment List had previously held tribal political office among the Brothertown Indians in New York (Love

68 A church history says this meeting was held in “a log chapel” that had seating for 150 persons and standing room for 100 more (Wilson 1938, chp. 1).
It appears that five of these men arrived in Wisconsin by 1832, another five between 1836 and 1839, and two after 1840. The initial party of six families who moved to Wisconsin in 1831 included two former “peacemakers” and a man who had held several tribal offices. At the time of the 1839 election of Brothertown commissioners to implement the Act of 1839, the Brothertown appear to have had available to serve in these positions six former peacemakers and four other former officials. Despite the presence of these experienced men, the five men elected commissioners in 1839 included three men who are not known to have held office previously, plus Charles Anthony who had served as a marshal and Randal Abner Sr. who had served as a peacemaker. Commissioners may have been chosen less for their political experience than for their ability or willingness to devote time to the allotment project. It appears that experience in Wisconsin was more important than prior political experience in New York, as three of the five commissioners (Randal Abner Sr., Thomas Commuck, and David Johnson) were members of the original party that arrived in 1831.

The Brothertown commissioners continued their activities for several years after they made their report to the President in 1839. They attempted until 1845 to resolve for the General Land Office (GLO) certain issues arising from their report and it appears they received the patents issued by the GLO in 1842 and 1845 in compliance with the Act of 1839 and distributed them to individuals. In response to a request from the GLO in 1842 to clarify six of the allotments made in the 1839 report, the commissioners submitted an “amendatory report” to the GLO in April 1845 and then responded to questions about that report with a letter to the GLO in July 1845 (Commuck et al. 4/2/1845; Anthony et al. 7/10/1845). The commissioners in 1845 remained the five men elected to their positions in 1839. The evidence available in the record does not show that the commissioners sought additional group political activity or relied upon such activity in performing these amendatory functions.

The most difficult issue of the allotment process stemmed from the attempt of the commissioners in their 1839 report to assign what had been the tribe’s saw and grist mill (or mills) to a member in “trust” for all the Brothertown. Before patents were issued in 1842, the Brothertown instead sought in 1841 to sell the mill property to two non-Indians (W. Dick et al. 3/9/1841). The GLO refused to issue a patent in trust or a patent to the non-member purchasers as assignees of the trustee, so a committee of Brothertown Indians in 1847 petitioned the President to order a patent be issued to the purchasers so the Brothertown could receive payment from them (W. Dick et al. 1/23/1847; Piper 2/25/1847). This mill issue was not handled by the five commissioners under the Act of 1839 but by a new committee of seven men that was created in 1841. The

69 John Johnson Sr. (b.1774), Benjamin G. Fowler (b.1774?), William Dick Sr. (b.1784), Randal Abner Sr. (b.1789), Elkanah Dick (b.1790c), Daniel Dick (b.1796), Laton Dick (b.1797), Isaac Dick (b.1804), John Dick Sr. (b.1808), Simon Hart (b.1810?), Charles Anthony (b. n.d.), and John Seketer Sr. (b. n.d.).

70 Abner, Dick, and Johnson were all from established families within the New York Brothertown community, while Commuck and Anthony were relative newcomers. Commuck (1804-1855) was a Narragansett from Rhode Island who had only moved to Brothertown in 1825, but his education and his marriage to Randal Abner’s daughter appear to have facilitated his advancement amongst the Brothertown members. Charles Anthony, probably a Narragansett from Charlestown, Rhode Island, had also joined the group in New York at a relatively late date, but had served as the Town Marshall in Brothertown from 1828-1832 before immigrating to Wisconsin in 1837.

71 The mill committee members were William Dick Sr., Randal Abner Sr., Thomas Commuck, Orsamus D. Fowler, William Fowler, David Fowler, and David Touce. Two of these seven men (Abner and Commuck) were
committee claimed that it acted on behalf of “the Brothertown Nation (late a tribe of Indians)” having been “duly appointed by vote at [a] town meeting” (W. Dick et al. 3/9/1841; see also W. Dick et al. 1/23/1847). Group voting at this “town” meeting provides some evidence that a Brothertown political process continued to function until 1841.

Political activity directed at the State of New York was handled somewhat differently. In October 1840, some Brothertown individuals “residing in the town of Manchester” appointed Elkanah Dick as their “attorney” to receive from the State of New York, or sue it for, money due the Brothertown Indians (W. Dick et al. 10/3/1840). This document did not claim this action and this appointment had been approved by a vote of a town meeting, but rather stated that the appointment was made by the 34 individuals signing the document.72 In 1841, the State of New York passed an act to pay to the Brothertown Indians who had moved from New York to Wisconsin Territory their portion of the principal of the annuity belonging to the Brothertown Indian tribe held by the State (New York 5/25/1841). The Brothertown tribe in New York then appointed Asa Dick to be its attorney and expressly authorized him to adjust this matter with Elkanah Dick (A. Dick et al. 6/4/1841). These two agents signed a stipulation of the number of Brothertown in Wisconsin and New York, and it was accepted for the purpose of determining the portion of the principal of the tribe’s annuity that was to be paid by New York to the Wisconsin Brothertown (E. Dick and A. Dick 6/8/1841). In these negotiations, Elkanah Dick was recognized as the representative of “the part of the Brothertown Indians” residing in Wisconsin.

The record contains no documentation describing any further corporate action by the commissioners. There is no indication that the commissioners developed into a governing body or “council” after the land had been patented. One of the men who served as commissioner did go on to hold other positions of influence in the community. Randal Abner was a leader in the newly-formed Methodist church in Brothertown. Lewis Fowler, Orrin Johnson, Daniel Wyatt, and David Wiggins were also identified as church leaders (Abner et al. 1843). The Brothertowns had established the first Baptist church in Wisconsin in 1834, but had converted to Methodism soon after. Thomas Commuck, who had also served as a commissioner, donated or sold the land on which the Methodist Church stood.74 Local Brothertown Indians were members of the Methodist Church for many years, but the evidence in the record does not indicate that the church served as a site of political action, or that the group exercised informal leadership over its members through the Methodist Church or any other informal organization.

72 Text added at the end of this document named five members of the Brothertown tribe in New York who also agreed to this appointment of an attorney.

73 Asa Dick, who signed this document as a “Peace Maker” of the Brothertown tribe in New York, was also on the 1839 Allotment List (#178) made by the Brothertown in Wisconsin. Elkanah Dick and Asa Dick may have been first cousins. Love speculated that William Dick (father of Elkanah) and Isaac Dick (father of Asa) were the sons of the “widow Mary Dick” (Love 1899, appendix).

74 Commuck also wrote an article entitled “Sketch of the Brothertown Indians” just a few months before his drowning death in 1855. The State Historical Society later published the article (Commuck 1859).
After the Act of 1839, some Brothertown political activity was devoted to the purposes of completing the Federal Government’s process of issuing patents to individuals who were allotted land under the Act of 1839 and ending the trust relationship with the State of New York. There is no evidence in the record of any continued relationship between the Brothertown Indians and the Office of Indian Affairs after the Act of 1839 (see the discussion of criterion 83.7(g)). The Brothertowns’ dealings with the State of New York ended in 1841, when the State stopped its annual annuity payments and distributed its trust fund. In order to complete the process of issuing patents to allotted individuals, the Brothertown commissioners dealt with the GLO of the Federal Government until 1845. An effort to continue that patenting process, made by a “mill committee” rather than by the commissioners elected under the Act of 1839, ended with an unsuccessful petition to the President in 1847. Some political activity continued into the 1840s, but it is not clear whether it was supported by group activity such as traditional town meetings after 1841.

Civil Political Officeholding at the Township, County, and State Level after 1839

Brothertown Indians voted in the territorial elections of 1840. Their participation as voters is demonstrated by evidence produced during a challenge to the seating of a representative in the territorial legislature. The election of the representative was contested successfully, and the certified winner William Bruce was replaced by Albert Ellis (Strong 1885, 325, 330). One of the questions at issue in the dispute was whether or not Brothertown Indians, as a result of the Act of 1839, were entitled as citizens to vote in the election of 1840 (Strong 1885, 327). The evidence produced by a legislative committee was that Brothertown Indians had given Ellis 34 votes, which Bruce claimed should be rejected (Strong 1885, 328). Thomas Commuck, who had been a Brothertown commissioner in 1839, testified that at the election held in September 1840 he was an election judge in the town of Manchester and that all the names on that poll list were Brothertown Indians, with the exception of twelve men he named (Commuck 1/28/1841). After a lengthy debate, the House of Representatives approved a resolution in January 1841 that “the votes of the Brothertown Indians given at Manchester precinct ought to be received and allowed” (Strong 1885, 329; see also Wisconsin Enquirer 2/6/1841). The Brothertowns’ right as citizens to vote was established.

During the fifteen years following the Act of 1839, Brothertown Indians held a number of political offices at the local and county level and served as representatives of the area or the county in the territorial or State legislature. The first known Brothertown Indians to hold governmental office at the local level were members of the first group of Brothertown who arrived in 1831: David Johnson was elected in 1840 to a position that was described by a source after his death as “town office,” likely referring to an office in the government of the township, and Thomas Commuck served as the first postmaster and as a justice of the peace, a township office (Brothertown Messenger n.d.; Love 1899, appendix; Johnson and Niles 3/27/1956; BIN 2008, 54). A county record book of the officers elected in the various townships of the county exists for the years after 1876, but not for earlier years, so it is not known whether or when the

75 In Wisconsin records, references to a “town” refer to a township. Thus “Brothertown Town” refers to the township named Brothertown, not the village. Brothertown Township was known originally as Manchester Township. The area’s Post Office address was known as Manchester until 1859 (Meyer 1964, 6, 20).
Brothertown maintained majority control of township government. The available evidence suggests that Brothertown Indians exercised some political influence within the local township government in the first decade after 1839, but does not show that they held most township offices or how long they were able to use local civil government to continue group political influence or governance.

The petitioner contends that all Calumet County offices were held by Brothertown Indians from 1840 to 1850 (BIN 2008, 53). However, the petitioner does not fully support this claim. The petitioner’s narrative identifies seven men elected to office in 1840, but not the office each held, and names three other men appointed to office. For the remainder of the decade of the 1840s, the petitioner identifies only one Brothertown officeholder at the county level. The petitioner says William H. Dick, whose father was a leader of the first party of Brothertown Indians to arrive in Wisconsin, was elected treasurer of the county in 1847 (BIN 2008, 54; see also Love 1899, 342, which does not give a date). Orsamus Fowler was elected county treasurer in 1854, and perhaps in 1852 as well (Calumet County 11/?/1854; BIN 2008, 54). In addition, Fowler’s obituary stated he served as chairman of the county board on several occasions, but did not give the dates of that service (Chilton Times 8/7/1874). The petitioner also identifies two Brothertown Indians who held the office of register of deeds, Lyman Fowler who was elected in 1854 and W.H. Dick in 1863, although that date of Dick’s election does not appear to be confirmed by State records (BIN 2008, 54; Wisconsin, Record of County Officers 1861-1976). This evidence does not demonstrate Brothertown control of county government after 1840.

Three Brothertown Indians were elected to the territorial or State legislature during the 1840s and 1850s. William Fowler was a member of the territorial legislature in 1845, Alonzo Dick served in the State legislature in 1849, and William H. Dick did so in 1851 (Wisconsin Blue Book 1885, 119-120, 144; BIN 2008, 54, 55). All of these men who held county or State office had been on the 1839 Allotment List. The offices these men held were only a fraction of the available Calumet County offices and State offices representing the county. Brothertown Indians had become a minority of the population of the county by 1850, so these Brothertown officeholders were elected by and served a constituency that was much larger than the descendants of the Brothertown Indian tribe. These county and State offices did not provide Brothertown descendants a means of governing a Brothertown entity. It has not been shown that Brothertown Indians holding public office in these years—whether at the township, county, or State level—used their office to act on behalf of a Brothertown group or to advocate for any group issues.

This evidence of Brothertown participation in the politics and governance of Calumet County and the State of Wisconsin supports the conclusion stated in 1851 by Thomas Commuck, one of the Brothertown commissioners in 1839, that “the Brothertown Indians petitioned Congress for citizenship” in 1839 and in 1851 were “now enjoying all the rights, privileges, and immunities of

76 The petitioner appears to rely on Love’s book for its 1840 information. That book does not cite its sources (Love 1899, 328; see also Johnson and Niles 3/27/1956; Sheboygan Press 7/22/1974).

77 Alonzo D. Dick (b.1813) #56, William H. Dick (b.1817) #164 as William Dick Jr., Orsamus Fowler (b.1816) #33, and William Fowler (b.1815) #45.
other citizens of the United States, and the State of Wisconsin” (Commuck 1851, 105). As the immigration into the county noted by Commuck in 1851 continued, however, the portion of county residents who were Brothertown descendants declined. No ancestors of the Brothertown petitioner appear to have held county office between 1860 and 1910 (Wisconsin, Record of County Officers 1861-1976, vols. 1-2.). At the State level, William H. Dick, who had served in the 1851 State legislature, was a member of the State legislature again in 1871 (Wisconsin Blue Book 1885, 144). After 1871, it appears that political officeholding by Brothertown descendants continued only at the local township level.

By the 1870s the government of Brothertown Township did not function as a de facto governing body for a Brothertown group. A county record book that identifies elected township officials between 1876 and 1919 shows that Brothertown Indians held some township offices as late as 1879 (Calumet County, Record of Officers 1876-1919). John Shelly was elected constable in 1876, 1877, and 1878. James D. Fowler was elected constable in 1876, 1878, and 1879. John Niles was elected justice of the peace in 1877. Each of these men had been on the 1839 Allotment List. Thus two Brothertown individuals were elected to township office in 1876, 1877, and 1878, and one in 1879, but the number of township officials chosen in the annual elections during these years varied between 11 and 13. The Brothertown therefore held less than one-fifth of township offices. George H. Baker, a non-Indian married to a Brothertown descendant, was elected justice of the peace in 1885 and 1903. His son Will Baker was elected constable in 1905. William Baker was on the 1901 Miller Roll as a Brothertown descendant, but was not on the Brothertown Committee’s 1901 list. Because his mother had married outside of the group, she and her sons were not considered Brothertown members by the Committee.

Township government may have functioned as a de facto government for Brothertown Indians in the decade after the Act of 1839, but that possibility has not been demonstrated with evidence in the record. The available evidence shows that Brothertown Indians did not by the 1870s hold a majority of township offices and were not able to use this civil government to maintain the informal political influence of a Brothertown group over its members. The few county or State offices held by Brothertown Indians during the period from the 1840s to 1871 were not capable of providing governance or a political process for a Brothertown group or continuous representation of its interests. Brothertown descendants during the 19th century participated in Wisconsin State and local governance and politics as citizens of the State and nation. The available evidence does not demonstrate that in doing so they were able to maintain a distinct political process for Brothertown members that maintained the group’s political influence over those members.

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78 The surnames Lynch, Newell, and Vincent are included in the petitioner’s genealogical database, but not J.W. Newell, sheriff, 1872-1875; Thomas Lynch, district attorney, 1878-1882; or Sam Vincent, clerk of court, 1882-1902.

79 Another source reveals that Niles served as justice of the peace in February 1876, meaning that he would have been elected to that position in April 1875 (J.W. Dick et al. 2/5/1876).

80 James D. Fowler (b.1837) #187, John Niles (b.1830) #226, and John Shelley (b.1831) #310.

81 It is possible the George H. Baker elected in 1903 was George Baker Jr. (b.1869).
Brothertown Political Activity and the Issue of an Internal Political Process after 1839

After 1847, the evidence in the record of Brothertown political activity deals with periodic efforts at obtaining compensation for alleged claims against the Federal Government. The record is lacking in evidence of the existence of an informal political process used by Brothertown descendants to maintain a group's political influence over its members. With the exception of a report of a meeting held in 1875 and an effort between 1875 and 1879 to resolve some lingering questions about the allotment of some small tracts of land under the Act of 1839, there is an absence in the record of evidence of any group of Brothertown descendants dealing with any issue of concern to the group other than monetary claims. Each episode of political activity appears to have been conducted on an ad hoc basis with new organizations and new positions created, and new leadership groups chosen—a five-member “national standing committee” in 1854, five “chiefs” in 1875, four “trustees” in 1878, individual “members” in 1881, a “chairman” of a meeting in 1886, six “chiefs” in 1893, and a five-member “business committee” with a “chairman” in 1901. The use of new position titles and new organizational names within a relatively short period of time implied a lack of political continuity, as did the periodic selection of new leaders rather than reliance upon existing ones.

Between 1847 when a Brothertown committee petitioned the President and 1875 when a local meeting was held, documentation in the record provides almost no evidence of Brothertown political activity. There is evidence of the existence in 1854 and 1869 of contracts to pursue claims on behalf of the Brothertown, but a lack of evidence about how these contracts were adopted and no available evidence that claims activity or other actions continued for more than a year in either case. In March 1854, a contract between the “Brothertown Nation of Indians (now citizens)” of Wisconsin and persons who would pursue a claim against the United States for $30,000 on a contingency basis for a percentage of any judgment was signed by five members of a “National Standing Committee” (W. Dick et al. 3/31/1854). Both parties to this contract consisted of Brothertown descendants, as all five signers for the National Committee and all three signers for the party of the second part were included on the 1839 Allotment List. No “National Standing Committee” is known to have existed previously and no available evidence indicates when or how it came into existence. The committee claimed a public town meeting provided it with its authority to make a contract, but how the meeting was called and how the meeting chose the Committee members and authorized its action is unknown.

Two months later, William Fowler submitted “a memorial of the Brotherton tribe of Indians” to Congress advancing a historical claim for $30,000 as compensation for lands allegedly ceded by several treaties. He signed the memorial as the “delegate from the Brotherton Indians” and claimed to be “their legally authorized agent” (W. Fowler 5/3/1854 in Senate 2/10/1855). William Fowler had not signed the contract of March 1854 as either a member of the “National Standing Committee” or as one of the persons contracted to advance its claim. It is not known how Fowler received his authority to act as the delegate and agent of the Brothertown, and whether he did so pursuant to the contract or separately from it. This claims activity died when

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82 William Dick, J.C. Hammer, Rowland Johnson, Hezekiah Fowler, and James Simons were the members of the National Standing Committee. The second party consisted of Laton Dick, Orsamus D. Fowler, and L[ucius] S. Fowler.
the claim was rejected by the Commissioner of Indian Affairs in a report forwarded to Congress in February 1855 (Manypenny 1/25/1855 in Senate 2/10/1855). The only available evidence of a claims contract in 1869, made with attorneys James B. Jenkins and George R. Herrick, is that it was mentioned in a report to the Secretary of the Interior in 1876 (Smith 5/31/1876). The Secretary declined to endorse it at that time (Chandler 6/26/1876). The individuals who entered into the contract on behalf of the Brothertown are unknown, the nature of the claim is unknown, and any efforts made by Brothertown descendants to advance the claim are unknown.

Some Brothertown non-member descendants who had not been included as claimants on the 1869 contract with Jenkins and Herrick gave a power of attorney in 1876 to Stockbridge Indian attorney J.C. Adams “to have our names placed on the rolls containing a list of Brothertowns (now in James B. Jenkins’s possession) as [we] claim our rights by virtue of being members and descendants of the said Brothertowns” (Welch et al. 1/18/1876). That 1869 list is not in the record. Fourteen people (10 women and 4 men) entered into this 1876 contract with Adams. Evidence in the record does not reveal whether other Brothertown descendants deliberately excluded these people from the earlier list of claimants. It appears that these people, all living in close contact with other Brothertown descendants, were advocating for their own rights as fellow descendants, particularly those women who had lost their membership in the group by virtue of their marriages to non-Brothertown men. There is no information in the petition to discern what, if any, action Adams pursued to obtain the inclusion of the signatories onto Jenkins’ list or what reaction other Brothertown descendants had to this legal action.

In January 1875 an election was held, according to a local newspaper, to choose two “chiefs” of the Brothertown Indians to replace two men who had died (Chilton Times 2/13/1875). Alonzo D. (A.D.) Dick had died in 1866 and Orsamus D. (O.D.) Fowler had died in 1874. Although the article described these two men as “chiefs,” no material included in the petition, including their obituaries, identifies them as “chiefs.” Further, the materials included in the record do not describe any actions taken by these men in any role of “chief.” The record indicates that O.D. Fowler had served as an elected official at the county level. His obituary credited one of his electoral victories over his brother Lyman to “the number of personal friends that he had among the Irish” (Chilton Times 8/7/1874). The documentation in the record does not include any information produced during his lifetime that referred to Fowler as a “chief” or that described him taking any specific action on behalf of the Brothertown descendants. The record also contains no references to A.D. Dick as a “chief.”

The result of the election of two new men in 1875, the article revealed, was a group of five “chiefs”: W.H. Dick, L.P. Fowler, E.M. Dick, James Simons, and O.G. Johnson (Chilton Times

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83 See criterion 83.7(b) for a discussion of “Non-member Brothertown Descendants.”

84 The 14 individuals on this list include the unallotted Nancy (Johnson) Schooner and five of her children; allottee Lucy (Skeesuck) Welch and her unallotted daughter Mary Ann (Hart) Welch; Francis (Fowler) Welch, the daughter of two allottees who married non-member Henry Welch, and her daughter Tressa; Abba (Hart) Welch, the daughter of two allottees who married non-member Charles Welch; George Baldwin, the son of allottee Sophia Sampson; Abbie (Wiggins) Schooner, the daughter of two allottees who married non-member descendant Elisha Schooner; and one person (David Smith) not in the petitioner’s database. Almost all of these people who were still living in 1901 appeared on the 1901 Miller Roll.
2/13/1875). The evidence in the record does not reveal when or how the other three men had been chosen. This meeting at first adopted, but then rescinded, a motion that the “council” elect a “head chief by an informal vote.” The “council” instead held separate elections, by ballot, for the two replacement positions. This article did not reveal the number of votes received by individual candidates. The total number of votes cast was 15 votes for the first position and 21 votes for the second position. The “chiefs” then elected John W. Dick as “sachem.” There is no information in the record explaining the difference between a “chief” and a “sachem,” or why the Brothertown descendants felt they needed to identify leaders with these particular terms. This meeting was called by notice and adjourned sine die—that is, without a specified date for the next meeting—which indicate the absence of a pattern of regular meetings of a “council” or the “chiefs.” The evidence in the record contains no references to historical Brothertown “chiefs” or any mention of any previous group of Brothertown “chiefs” in Wisconsin.

The meeting in 1875 also was called, the newspaper reported, to take action regarding lands that had not been patented in compliance with the Act of 1839. The meeting approved motions instructing the “chiefs” to “inquire into the title to lands not patented” in Brothertown Township and to prevent trespassing on the unpatented lands or prosecute the trespassers (Chilton Times 2/13/1875). The meeting also appointed a committee to fence in the “burying ground,” but the record contains no other evidence demonstrating group care of a cemetery. About two weeks after this meeting, L.P. Fowler and W.H. Dick wrote to the GLO. They signed their letter as “chiefs,” but did not expressly mention the group they represented (L.P. Fowler and W.Dick 2/8/1875). Two additional letters to the GLO were signed by Dick as an individual (W.H. Dick 3/25/1875 and 8/31/1875). These letters initially inquired whether patents had been issued for certain small tracts of land and finally asked the GLO to certify that some tracts had not been patented. Dick revealed that this issue involved some people cutting timber on some of the unpatented lands of the former reservation, and he asked the GLO for a “certificate” for use “in court” (W.H. Dick 8/31/1875; see also L.P. Fowler and W.H. Dick 2/8/1875). The record does not contain documentation about how, or whether, such a court case was pursued.

The next year these men adopted a different approach by seeking to obtain patents to the unpatented lands by an act of Congress. In February 1876, the “Chiefs and Headmen of the Brothertown Indians residing at Brothertown” appointed Lyman P. Fowler as “attorney for us and all the Brothertown Indians in the United States” to prosecute and demand payment for “all and any claims” which they have against the United States (J.W. Dick et al. 2/5/1876). The power of attorney given to Fowler, who was identified as one of the “chiefs” in the account of the 1875 meeting, was signed by three of the other four “chiefs” and also by David Fowler and John W. Dick, the chairman and secretary of the meeting in 1875. Lyman Fowler and John Starkweather, an attorney in Washington, D.C., prepared a memorial to Congress in which the “Brothertown Indians” claimed the allotment they made of their former reservation lands under the Act of 1839 failed to include certain small tracts of land (L.P. Fowler and Starkweather

85 None of the five implied “chiefs” prior to this 1875 election—W.H. Dick, L.P. Fowler, E.M. Dick, O.D. Fowler, and A.D. Dick—were among the five members of the 1854 “National Standing Committee.”

86 It should be noted that the Brothertown Indians did not use the terms “chief” or “sachem” to identify leaders when they were in New York.
2/7/1876). Fowler then signed a power of attorney to Starkweather to “prosecute before Congress” the matter of the “title to lands” of the Brothertown Reservation “which have not been as yet patented” (L.P. Fowler 3/15/1876). Fowler invoked the authority of his own power of attorney and signed this document as “representative of the Brothertown Indians – Wisconsin.”

In 1878, Congress passed legislation that closely followed the 1876 memorial. The Act of April 20, 1878, authorized the GLO to issue a patent, for the “unpatented” lands in the township of land previously reserved by treaty for the Brothertown Indians, to four named individuals “in trust for the Brothertown Indians” (U.S. Congress 4/20/1878). The Act authorized the individuals designated as trustees to sell those unallotted and unpatented lands to any purchaser when “a majority of said Brothertown tribe” petitioned them to do so. The Act directed the trustees to distribute the proceeds of the sales to Brothertown Indians according to the “former usages, customs, and regulations” of the tribe. The legislative history of the Act of 1878 indicates that Congress sought to correct a perceived inadvertent error relating to about 100 acres in total. The managers of the bill in both the House and Senate, and the Senate committee in its report, emphasized that the bill sought to benefit individuals who were now “citizens” (Morgan 2/8/1878, U.S. Senate 4/2/1878, Oglesby 4/9/1878). The Senate committee argued that “the parties in interest are citizens and competent to decide for themselves as to the best disposition to be made of the lands” (U.S. Senate 4/2/1878).

The Act of 1878 created a new set of Brothertown leaders, the “trustees.” The Act expressly named four individuals as trustees to receive a patent to any unpatented lands of the former Brothertown reservation. It did not provide for patents being issued to the Brothertown “chiefs” or a Brothertown collective entity. The record does not include evidence that shows how these men were chosen to be trustees. The four men identified as trustees were Laton Dick Sr., Lucius S. Fowler, David Fowler, and Orrin G. Johnson (U.S. Congress 4/20/1878, sec. 2). Only one of the four “trustees” named in the Act of 1878 was also one of the five “chiefs” identified in the account of the meeting in 1875. 87 The trustees had a narrow grant of authority to deal with a single issue. Evidence in the record does not reveal how the trustees exercised that authority. The evidence does not show the trustees acted as part of an existing Brothertown political process or that they maintained political influence over Brothertown descendants and were also influenced by them. It is possible the trustees were expected to act in compliance with the wishes of some other Brothertown political group, but no evidence in the record demonstrates they did so. The record does not show that the trustees participated in any process of group decision making.

The evidence in the record shows the trustees acted to implement the Act of 1878 only by attempting in 1879 to obtain the patent issued to their attorney in compliance with the Act, engaging in a lawsuit over one tract of land that was decided in 1885, and advertising land for sale in 1887. A problem arose after Congress passed the Act of 1878 because the power of attorney given to Starkweather in 1876 provided that he would receive any patents granted in

compliance with any legislation (L.P. Fowler 3/15/1876). Starkweather refused to send to the Brothertown trustees the patent he received from the GLO until he was paid for his services, and the trustees then wrote to the GLO complaining of extortion by the attorney and requesting to receive the patents or a copy of them directly from the GLO. In making their claim, the trustees stated that Starkweather “has no power of att[orne]y from us or the Brothertown Indians” (D. Fowler et al. 3/22/1879). The Commissioner of Indian Affairs declined to act, noting that the Act of 1878 “devolves no duty” on his office and that “the Brothertown Indians are understood to be citizens of the United States” (Hayt 4/3/1879). He thought it was not improper, however, to suggest to the GLO that it provide the trustees with a copy of the patent and leave the issue between them and the attorney to be settled by the courts.

The trustees engaged in a lawsuit over a tract of the allegedly unpatented lands with a man named Scott who had purchased land from a Brothertown allottee, land which the trustees maintained had not been properly allotted and was part of the lands patented to them (Fowler v. Scott 1885). The trustees lost the case on appeal to the State Supreme Court in 1885 and the land in question remained the property of Scott. When unpatented lands were offered for sale in 1887, three of the four trustees had died. David Fowler, the remaining trustee, advertised a public auction of the lands. The record contains no evidence of any group petition to the trustees to sell those lands at public auction, as required by the Act of 1878. The record does not contain any documents that show the trustees made the distribution of funds that was supposed to take place after the lands were sold, or how they distributed the proceeds of the sales. Later, the record contains only a brief reference to the issue of these unpatented lands, in a letter written in 1892 regarding another topic, when John Niles complained: “We had a taste of the chiefship in the squandering of the fractionated lands and awards” (J. Niles 3/6/1892). This complaint implied a perceived lack of group involvement in implementing the Act of 1878.

Brothertown descendants made two contracts with J.C. Adams, a Wisconsin attorney with Stockbridge Indian ancestry, in 1881 and 1886. It is unclear what Adams actually did on behalf of Brothertown descendants. In 1881, 75 or 76 individuals who identified themselves as “formerly members of the Brothertown tribe of Indians” and as “members of the late Brothertown tribe of Indians” made an agreement with Adams and gave him power of attorney to “take exclusive charge and control” of a claim or claims against “the Government of the United States” for money due them under unspecified treaty stipulations or acts of Congress (J. Niles et al. 10/29/1881; Marthers et al. 10/29/1881). The form of the power of attorney suggests this document was signed initially by three men—John Niles, Solomon Niles, and David Wiggins—and then circulated to collect the other signatures. The agreement and power of attorney contain the same 75 names in the same order, but the power of attorney contains an additional name as #76. These two documents did not mention any governing body or leaders of a Brothertown group. They did not recite any decision made or approval given by any meeting of an organization or informal group. This agreement and the corresponding power of attorney were made with Brothertown descendants acting as individuals.

88 The Brothertown trustees expected to receive “patents,” but the Commissioner of Indian Affairs referred to “the patent” because he had been informed by the Commissioner of the General Land Office that a patent was issued on June 10, 1878 (D.Fowler et al. 3/22/1879; Hayt 4/3/1879). The Act of 1878 referred to “a patent” (U.S. Congress 4/20/1878, sec. 2).
A new agreement with J.C. Adams was made in 1886 to replace the agreement of 1881. Circumstantial evidence suggests the Department of the Interior declined to approve the initial contract and objected to the compensation it provided the attorney. The main change between the agreement of 1881 and the agreement of 1886 was a reduction of Adams’ fee from 20 percent to 10 percent of an award (S. Niles et al. 12/2/1886). The new contract also specified it would have a 10-year term and stated more explicitly the claim based on a specific treaty that would be pursued. Adams called a meeting to approve a new agreement (J. Niles 12/2/1886). The meeting elected a chairman and a secretary, with John Niles chosen as chairman. It also elected brothers John Niles and Solomon Niles as a committee of two “to solicit names” to the contract. The text of the agreement of 1886 contains 35 signatures, suggesting this may have been the attendance at the meeting. Additional pages, perhaps containing the solicited signatures, brought the total of the “undersigned members of the Brothertown Indians” to 147 (S. Niles et al. 12/2/1886). The minutes of this meeting clearly state the meeting was called by the attorney, and reveal that the meeting to approve this contract was neither called by nor conducted by any existing governing body of a Brothertown group (J. Niles 12/2/1886).

This contract with Adams to pursue the “Kansas claims” of the New York Indians, including the Brothertown band, was made in the context of competition among several law firms to be the counsel authorized by the Office of Indian Affairs to represent the Indian parties in the lawsuit. In 1892 and 1893 representatives of the competing firms of James B. Jenkins and Albert Miller came to Wisconsin and to Brothertown (Cooper 1/11/1892; Bowman 1/23/1893; Quinney 1/30/1893). In 1892 a Stockbridge-Munsee member wrote to Adams that he had heard Jenkins had enlisted the aid of two Brothertown descendants, Mr. Fowler and John Cuish, to go among the Indians and obtain signatures to protest an earlier power of attorney given to Miller (Cooper 1/11/1892). The letter did not give a first name for the Fowler in question, but at that time there were several politically active Brothertown men with the Fowler surname. John Cuish (unknown-1892) was a Brothertown descendant who is not identified in any other petition documentation as being active in a Brothertown group’s affairs at that time. This letter in 1892 indicates that the Stockbridge, Oneida, and Brothertown Indian populations had some interaction while pursuing their claims activities, and that the claims effort involved Brothertown descendants other than those identified as elected leaders.

John Niles corresponded with attorney Adams in 1892 and 1893 about a Brothertown claim. Niles (1830-1900) had called to order the 1886 meeting at which Brothertown descendants signed a contract with Adams and had been one of the three men elected in 1875 to help fence the Brothertown cemetery. Niles acknowledged that the Brothertown people were “divided about the claim” (J. Niles 2/25/1892) and that some denied they were bound by the contract with

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89 Adams submitted this contract to the Office of Indian Affairs in 1887 but requested its return in 1893. The Commissioner of Indian Affairs returned the contract to him in April 1893 (Browning 4/20/1893). This request indicates either that Adams in 1893 withdrew his claim to represent the Brothertown in the claims case or reached an agreement with another claims attorney. There is no evidence in the record that any Brothertown group asked Adams to withdraw his contract.

90 The petitioner contended that this meeting was “called by John Niles” (BIN 2005, 106). The document said, “A special meeting was call[ed] . . . by Mr. John Adams. . . .” (J. Niles 12/2/1886).
Adams (J. Niles 3/6/1892). Some Brothertown descendants supported Jenkins’ bid to be the claims attorney, while Niles and Adams opposed Jenkins and appear to have cooperated with Miller. Borrowing imagery from the neighboring Stockbridge Indians that was familiar to Adams, Niles referred to his opponents as the “Indian party of Brothertown” and the “tribal party of Brothertown,” implying that Niles saw the people who supported himself and Adams as Indian descendants who embraced their role as citizens (J. Niles 7/9/1893 and 9/17/1893). The evidence in the record provides only Niles’ side of this disagreement over claims attorneys and only his account of his opponents’ activities.

A general council of the parties to the claims case of the New York Indians was held in New York in July 1893, and prior to that a council was held, or local councils were held, in Wisconsin (see Jenkins 11/6/1893). Niles described a council held in June 1893 at which the participants proceeded “to elect six chiefs” (J. Niles 7/9/1893). Niles referred ironically to James Simons of Kaukauna as the “venerable head chief” and identified five other men elected as “chiefs and head men.” At this meeting, Niles said, Simons presented a power of attorney for Jenkins to be signed by the participants. Niles also reported that this “Indian party of Brothertown . . . sent a delegate to the general council” in New York (J. Niles 7/9/1893). He complained later that the “delegate from the tribal party of Brothertown” who had attended the general council “as usual made no public report” (J. Niles 9/17/1893). In informing Adams of the results of the local meeting, Niles admitted that several individuals who had signed the contract with Adams “gave their sanction to the new movement” (J. Niles 7/9/1893). This characterization of an “Indian party” with elected “chiefs” as something new indicates that Niles, at least, did not see his opponents as a continuing governing body or as established leaders holding acknowledged positions of political influence.

Niles also referred to meetings of the “Quinney Mongrels” that were held in Brothertown at the home of Charles Welch (J. Niles 3/6/1892 and 6/11/1893). He did not clearly state these people were claiming to be Brothertowns, but indicated he did not consider them to be Indians (J. Niles 3/6/1892). Niles reported that James Simons, who was elected a “chief” at the meeting in June 1893 and had been elected a “chief” in 1875, was expected to meet with the unidentified members of this group at Welch’s house in relation to the claim (Niles 6/11/1893). This reference to Simons indicates that he was willing to meet with a group of people whom Niles scorned, but not that the other “chiefs and headmen” elected in 1893 met with this group or believed its members eligible to participate as Brothertowns in the claim. The one person named Charles Welch in the petitioner’s genealogical database who was alive in Brothertown at the time was Charles H. Welch, then the husband of Abbie Jane (Hart) Welch who had signed the 1876 power of attorney with other women who had married non-Brothertown men. The petitioner may wish to investigate the role of Abbie (Hart) Welch in organizing any group meetings.


92 No documents in the record indicates that the elected “chiefs and headmen” communicated with Adams to revoke the contract that had been signed in 1886.

93 This letter may have identified the delegate as “Professor Fowler,” but this characterization does not clarify which of many Fowlers he may have been.
The disagreement over claims attorneys may have reflected another difference among Brothertown descendants. Niles appeared to disparage the use by others of the title of "chief" and declined to identify himself with the title of "head men" (J. Niles 2/25/1892; see also 7/9/1893). Niles had served as an elected justice of the peace and stated he believed the Brothertown people were citizens who need "not pay any attention to former customs and usages" of a historical tribe (J. Niles 3/6/1892). After Niles' death in 1900, however, Edgar M. Dick, a local merchant whom Niles identified as a supporter of attorney Jenkins in 1893, would seek to limit Brothertown enrollment on the judgment roll of 1901 by applying the membership rules of those former customs. No documentation in the record indicates that Brothertown descendants divided into two factions in the manner that the Stockbridge-Munsee had. Niles disparaged an "Indian party," but he did not characterize himself or any people who may have agreed with him as being a "faction" or "party." The evidence in the record does not show that these different approaches to the claims case continued factional disputes of long standing among the Brothertown rather than being a specific and limited disagreement.

A document in the record indicates some Brothertown action in 1898 on behalf of a non-member (Ball et al. 1/10/1898). This document is a petition in support of Frank Stage, a local man who was nominated for the position of postmaster in Brothertown. The petition contains 52 names of residents of Brothertown Township: 15 of them are Brothertown descendants, 3 are Brothertown non-member descendants, and 1 was the spouse of a Brothertown woman. This document does not consist of individual signatures; rather, one person appears to have signed all of the names. The petition refers to Stage as "a staunch Republican." Other evidence indicates some Brothertown descendants participated in politics in the Democratic or Prohibition parties. The petitioner may wish to explore the role of Brothertown descendants in local politics during this time for evidence of group activity. However, this petition appears to show Brothertown descendants acting together with non-Indian residents rather than acting as a Brothertown group.

In September 1901, a "Business Committee of the Brothertown Indians in Wisconsin" sought information from the Commissioner of Indian Affairs. The evidence in the record does not reveal when or how this committee was formed, and whether it was elected, appointed, or self-appointed. Only the committee’s final letter in December 1901 transmitting a roll to the Office of Indian Affairs revealed the identity of its five members—Theodore Dick, E.M. Dick, Lathrop Fowler, Oscar Johnson, and John E. Hammer (T. Dick et al. 12/2/1901). Three of these men (Theodore Dick, Johnson, and Hammer) had been elected "chiefs and headmen" at the June 1893 meeting to approve a power of attorney for Jenkins. After the Court of Claims issued a decision on the "Kansas claims" of the New York Indians and Congress appropriated funds to pay that judgment, the Office of Indian Affairs sought to identify the individuals who should share that award. Brothertown descendants in Wisconsin were contacted by an Indian agent in

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94 Oscar Johnson, one of the members of the Business Committee, said in testimony given to Special Agent Guion Miller in 1903 that he had been appointed to "the committee to enroll the Brothertown Indians" by the Indian Office (Johnson 1903, 43). The record does not contain documentary evidence of any such appointment. It is possible that the local Indian agent or the special agent preparing the claims roll appointed an advisory committee by relying mainly on the men elected in 1893 to approve a contract with a claims attorney. The Office of Indian Affairs in Washington dealt with the Business Committee as an advisory committee rather than as a federally acknowledged tribe with recognized leaders. If the Business Committee was appointed by outsiders rather than elected by Brothertown descendants, then its existence does not provide evidence of an internal group political process.
Wisconsin for information to determine those people entitled to be the Brothertown beneficiaries of the award. E.M. Dick then wrote to the Office of Indian Affairs on behalf of the Business Committee.95

According to the reply of the Acting Commissioner, Dick asked how his committee should prepare a roll of Brothertown members and, specifically, whether it would be “legal” to prepare a roll in accordance with the “former laws and customs” of the Brothertown Indian tribe (U.S. Commissioner of Indian Affairs 9/11/1901). The Acting Commissioner informed Dick that the Office of Indian Affairs wished to receive “the names of every recognized member of your tribe,” arranged by family groups. He made it clear, however, that the judgment roll to be prepared by the Office of Indian Affairs would consist of people of demonstrated Brothertown ancestry and would not be limited to the committee’s roll. He also emphasized that all claimants needed to submit a claims application “regardless of the fact that they may be upon the roll prepared by you.” The Acting Commissioner noted that “there are many persons who are the legal descendents of Brothertown Indians . . . and their claims will have to be considered on the evidence submitted . . . showing that they are actually of Brothertown blood and parentage.” Therefore, the Acting Commissioner asked Dick’s committee for information “that may assist in the identification of claimants who are not on the roll furnished by your committee.” He specifically requested “copies of any old rolls after 1838.”

Dick responded to this letter by stating that the Brothertown had “no Roll later than 1838” [1839] (E.M. Dick 9/16/1901). Without explicitly objecting to the Acting Commissioner’s advice, he argued that “[i]n making the Roll there must be a line drawn somewhere” or “a large number of claimants” would “get on our Roll” who “under our former laws and customs would not be entitled.” Although the Office of Indian Affairs had not responded directly to Dick’s question about “former laws and customs,” its answer implied those customs did not matter because claims would be paid not to “members” only but to all descendants. When the Business Committee transmitted its roll of the people it recognized as entitled to be placed on the claims award roll, it did not state the basis on which it had included these “209 members” (T. Dick et al. 12/2/1901).96 The Business Committee said it understood the Commissioner’s “instructions” to say that after he had considered the applications “of all others” and determined those who had proved their claim, he would return the expanded roll “for the approval of the Committee.” This assertion misstated the Acting Commissioner’s letter; he had requested information from the committee in order to prepare a claims judgment roll but had not offered it any right of final approval of a tribal membership roll.

The only evidence in the record of the activity of this Business Committee, in addition to these two letters and the roll sent to the Office of Indian Affairs, is the one-page minutes of a meeting of the committee in October 1901. At this meeting the only item of substantive business was to

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95 Neither the Indian agent’s letter nor Dick’s letter to the Office of Indian Affairs is in the record.

96 The petitioner erroneously gives credit for the compilation of the 1901 judgment list of 570 names to the Brothertown Business Committee and incorrectly states the Business Committee submitted a roll of 570 members which the Federal Government adopted (BIN 1995, 82; 2005, 6; see also BIN 2008, 1). The petitioner’s researchers appear not to have seen the Business Committee’s roll of 209 names and thus not to have realized the difference between the Business Committee’s list of 209 “members” and the Government’s list of 570 descendants.
read a letter about the claims enrollment process from the area’s member in the U.S. House of Representatives and to approve a motion to invite him to meet with the committee (T. Dick 10/2/1901). Even though this Business Committee had been in existence for at least a month, judging by Dick’s earlier letter to the Indian Office, the minutes of this meeting indicate the committee began by electing a temporary chairman and then proceeded to elect a permanent “chairman,” Theodore Dick, and a permanent “secretary,” E.M. Dick. Although the minutes referred to a meeting of the “head men” who constituted the committee, there was no reference in these minutes, or in the committee’s correspondence, to any existing group of Brothertown “chiefs” or “trustees.” There is no evidence in the record to suggest the committee, with its slightly revised name of the “Business Committee for the Brothertown Tribe,” submitted its roll to any Brothertown group or governing body for approval before it was submitted to the Office of Indian Affairs (T. Dick et al. 12/2/1901).

The claims roll Guion Miller prepared in 1901 and certified in 1904 more than doubled the size of the Brothertown Business Committee’s list, from 209 members to 570 descendants. There are no documents in the record describing the reaction of the Business Committee to the inclusion of these additional descendants on the Miller Roll. The petition submission does not contain, and OFA did not locate, any final report detailing the number of claimants on a final roll or when the funds were actually paid out. The record contains two schedules which indicate that the Treasury issued each of the 570 claimants on Miller’s 1901 list at least $179 by 1915, distributed in two payments of $100 and $79 (BIA 1915). There is no discussion in the petition submission of any response by individuals receiving the payout. Information in the record is unclear as to what happened in the years immediately after the claim was paid. There is no evidence in the record that the men who made up the Brothertown Business Committee exercised any other political function, either individually or jointly, on behalf of the Brothertown descendants.

Summary of Evidence of Political Influence, 1839-1904

The regulations provide in section 83.7(c)(3) that if a petitioner meets the requirements of one of the subparts of section 83.7(b)(2) with evidence that is sufficient by itself to satisfy criterion 83.7(b), then the petitioner is considered also to have evidence sufficient to meet the requirements of criterion 83.7(c) for the same time period. The evaluation of criterion 83.7(b) found the evidence in the record insufficient to demonstrate the petitioner meets the requirements of section 83.7(b)(2)(i) after 1839. That available evidence does not demonstrate that more than 50 percent of the members of a historical Brothertown group resided in an area consisting “exclusively or almost exclusively” of group members. The petitioner does not satisfy criterion 83.7(c).
83.7(c) after 1839 by virtue of the crossover provisions of 83.7(c)(3). Direct evidence of the group’s political influence over its members since 1839 must be presented by the petitioner.

The evidence in the record indicates that the Brothertown descendants engaged in limited political activities after they became citizens. Most of their activity was limited to pursuing a variety of claims against the United States Government. The evidence in the record demonstrates that Brothertown descendants organized in order to pursue their claims cases. The Department has maintained that claims, while they can be important evidence of political influence, cannot be the sole political activity in which the petitioning group engages. The only evidence in the record of the group addressing any issue other than claims was in 1875 when the group elected a committee to attend to the otherwise-unidentified “burying ground.” With the exception of this mention of fencing in a cemetery, the record does not indicate that any individual leader or group of leaders pursued any political activities other than claims.

The record contains no references to any descendants practicing informal leadership for the petitioning group. There is no evidence in the record that group leaders settled disputes among members or exerted strong influence on the behavior of individual members. There are no examples of the group petitioning local officials regarding any needs members of the group may have had from local government, or of Brothertown leaders mediating with outside officials any concerns they may have had about members of a Brothertown group. The local Brothertowns were members of the Methodist Church for many years, and although some members served as trustees, the evidence in the record does not indicate that the church served as a site of political action for Brothertown descendants. There is little evidence that the group exercised informal leadership through the Methodist Church or any other informal organization.

The evidence in the record indicates that some Brothertown descendants held elected office in Calumet County, and that certain descendants were held in high esteem by Indians and non-Indians alike. However, the record does not provide specific examples of these Brothertown elected officials advocating specifically on behalf of any Brothertown descendants, individually or collectively. The petition documentation provides no evidence that the Brothertown descendants holding public office governed a population composed mostly of Brothertown members. The Brothertown elected officials appear to have served as individuals, and do not appear to have organized to address any needs or concerns of the larger body of Brothertown descendants.

Evidence Relevant to Political Activity and Influence, 1905-1949

The evidence in the record for the period of 1905-1949 includes, but is not limited to, Federal and State census records, records of Federal acts, newspaper articles, and personal correspondence.

The Montauk Claim

The petition record contains five letters written by “Chief Wild Pigeon” (nee James Waters), a leader of the Montauk Indians in New York to Mrs. M.F. Johnson (probably Marcia Fowler
Johnson. The letters were written in 1919 and 1920, but they reference an event which occurred in 1906. According to these letters, a number of Brothertown descendants of Montauk ancestry had communicated with the Montauks still remaining in New York, and had actually enrolled in the group. It is not clear whether these people actually traveled to Brothertown or communicated by mail, but he included a statement from the wife of previous Montauk chief Nathan Cuffee regarding the Brothertown descendants and their actions in 1906:

"After your letter, I placed the matter before Nathan’s wife. I quote from her letter of May 15, 1919. “As to the Brothertown matter, there are or were about 16 who claimed Montauk blood. They did pay $15 a head as I remember the time very well. Nathan stood firmly against admitting them for so little while others were paying so much, but the council voted to admit them. Whether they have paid any since to help the litigation I do not know. But they did prove their Montauk blood.”" (Wild Pigeon 4/6/1920, 1)

“Wild Pigeon” also included a list of 78 Brothertown descendants,\(^98\) entitled “Enrolled in 1906”; however the statement by the wife of Nathan Cuffee indicates that a much smaller number of Brothertown descendants actually enrolled at that time. The list is divided into two parts (18 names in the first section, 60 in the second), and the initial 18 names (three of which were identified as “deceased”) appear to be the people who enrolled in 1906.\(^99\) The second 60 (including one duplicated name and 10 noted as “deceased”) enrolled later, possibly through the correspondence sent by MF Johnson. This is indicated by the fact that several of the people named on the second part of the list were not born until after 1906. There is no indication that the Brothertown descendants and the Montauks ever met in person, and both enrollments may have been conducted strictly by mail. One of the letters indicates that there was a suggestion to send a Brothertown delegate to New York to meet with the Montauks, but “Wild Pigeon” appears to have discouraged the Wisconsin group from undertaking this expense (Wild Pigeon 8/6/1919, 1). There is no information in the record describing the reaction of any of the other Brothertown descendants to the actions of those Brothertowns who enrolled with the Montauks.

The correspondence between “Wild Pigeon” and M.F. Johnson indicated that a man named Rev. Eugene A. Johnson visited or otherwise communicated with the Brothertown descendants in Wisconsin and made them aware of their Montauk connections (Wild Pigeon 4/29/1919, 1-2). Eugene Johnson was a member of the Montauks, a Presbyterian minister credited with starting “. . . the movement to restore their rights to the Montauks” (New York Times 9/23/1900, 15). In 1900, Johnson was one of four Montauks who testified before the Senate subcommittee on Indian Affairs regarding the Montauk’s claims to land on Long Island. However, according to “Wild Pigeon,” Johnson had not been involved legitimately in Montauk affairs for many years,

\(^{98}\) Thirty-nine of the 78 people on the 1919 “Wild Pigeon” list had also been named on the 1901 Guion Miller list.

\(^{99}\) On the 1910 Brothertown township Indian schedule, nine people otherwise identified as Brothertowns were enumerated as Montauks; one woman identified herself as a Narragansett with a Montauk father, and another identified herself as a “Montauk/Brothertown” (three others also identified themselves as Montauk or some combination of Montauk and Brothertown, but the enumerator’s crossouts are very difficult to read). At least six of the people identified as Montauk on the census were not included on the list submitted by “Wild Pigeon.” One of the people included on “Wild Pigeon’s” list was identified as a Brothertown.
and had left the east coast for unknown parts somewhere “out west.” There is no information in the petition documents describing how Rev. Johnson may have contacted the Brothertown descendants.

Outside of these letters, there is no other information in the record regarding any further communication between the Montauks in New York and the Brothertowns in Wisconsin. There is no information in the record describing why communication between the Montauks and the Brothertowns ended, or if those who enrolled in 1906 or in 1919-20 remained involved in the affairs of the Montauk.

The Six Nations Clubs

While some of the Brothertown descendants became involved in the affairs of the Montauks, a large number of Brothertown descendants became part of the “Six Nations Clubs.” The history of the Six Nations Clubs began with Laura “Minnie” Cornelius Kellogg (1880-1949), an educated Wisconsin Oneida from an influential Oneida family. Mrs. Kellogg advocated for Indian independence from governmental oversight. She and her non-Indian husband Orrin Kellogg (?--1935) formed an organization based somewhat on the original League of the Iroquois, and included not only the Iroquois in the United States, but also those in Canada. Further, the Kelloggs also involved the Brothertown and Stockbridge in their organization, as they acknowledged the historical relationship between the Oneida and the New England Indians who had immigrated to New York during the 18th century. The Kelloggs spent many years pursuing a number of claims against the Federal Government, New York State, various oilmen, and several other entities. They solicited funds from Indians on both sides of the border, and were arrested in both the United States and Canada for their fundraising activities. The Canadian government tried the couple (and Cornelius’ brother) on charges of fraud, but they were ultimately acquitted and returned to their campaign of fundraising.

The petition contained many documents related to the Kelloggs and their fundraising. Through the “Six Nations Clubs” the Kelloggs collected dues or “loans” from members, promising that the loans would be repaid when they settled the claims (particularly a claim involving the St. Lawrence waterway). Members who did not contribute financially were pressured to contribute, and threatened with exclusion from the claims unless they continued to send money to prosecute the case (Keifer 5/20/1930, 1; Welch 4/12/1932, 1-2; Keifer 8/16/1932, 1). The Kelloggs traveled to various Indian communities in both countries from 1924 through the 1930s, updating the groups on the progress of the cases. Sometimes they collected funds in person, but the officers of the organization also collected money and forwarded it to the Kelloggs. Orrin Kellogg died suddenly in 1935, and his wife carried on with the fundraising and claims activities. However, the claim itself (and the promises of upwards of $40,000 per claimant) never materialized, and the “club” members never recovered any of the money they contributed. Laura Kellogg died, impoverished, in 1954.

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100 One report indicated that the local club kept about 20 percent of the total collected, forwarding the remaining 80 percent to the Kelloggs (Reilly 4/24/1934, 1-4)
The record contains a copy of the correspondence among several Brothertown descendants and people identified as officers of one of the “clubs.” Brothertown descendants were members of the “Six Nations Clubs” at Quinney, Stockbridge, and Kaukauna. Descendants who did not live near a place where meetings took place were also solicited by mail, and encouraged to contribute money to support the Kellogg’s efforts (Baldwin 4/30/1928, 1; Welch 4/23/1928, 1). One letter promised that people would be repaid with 8 percent interest (Welch 5/6/1929), while another stated that one of the clubs was offering a “3 for 1” offer: anyone willing to “loan” the Kelloggs $25 would receive $75 when the claim was paid (Baldwin 2/15/1935). However, there is no information in the record indicating that the “Six Nations Clubs” were sites of any political activity other than claims, and the members themselves do not appear to have enjoyed a bilateral relationship with either the club’s leaders or the Kelloggs. The people who served as officers and collected the money to pursue the claims do not appear to have been people of particular influence among the Brothertown descendants, nor did the officers gain prestige by participating in the clubs. Interviews in the record and those conducted by OFA in October 2008, do not indicate that the clubs discussed any business other than the claims or that the clubs had a social element (for example, no informant reported that the clubs held fundraising dances or suppers to support the Kellogg’s efforts). The clubs were also not limited to only members of one group of Indian descendants. Any of the “New York Indians” could attend these meetings, and the record does not indicate that the Brothertown descendants at these meetings discussed any business specific to their members’ concerns.

**Political Activity After 1930**

The record contains few documents or interviews regarding political activity between 1930 and 1980, when the current petitioning group organized. There is no available evidence of the presence of any formal or informal leaders, a council or governing body, or minutes from any group meetings conducted between 1930 and 1950.

The petitioner’s 1995 narrative directly attributes the lack of political organization after the “Kellogg era” to the actions of the Kelloggs and the disillusionment people felt when they realized that they would never recover the money they invested in the Kellogg’s efforts. For example, the 1995 narrative stated:

> The Kellogg movement had a devastating impact on the leadership of many tribes. The Brotherton [sic] were no exception. For all practical purposes the tribal membership disavowed the leaders, and while not openly blaming them, they vested no trust in them. Brothertons [sic] became reluctant to follow anyone . . . This distrust of leadership was the most lasting legacy of the Kelloggs. (BIN Narrative 10/21/1995, 94)

This interpretation of the post-Kellogg period is not supported by the evidence in the record. The Six Nations Clubs were pan-Indian/pan-tribal organizations that existed only to pursue claims efforts. The petitioner identified several people (Ida and Ray Baldwin, Herman Niles, Henry Fowler, Forrest and Madge Bohlman, and Perry and Rachel Welch) as “leaders” of the clubs (BIN Narrative 10/21/1995, 89), but only Herman Niles is mentioned in any type of leadership position outside of the Six Nations Clubs (his actions will be discussed later in the
There is no evidence that even when the “clubs” functioned, that the “leaders” did anything other than collect money to pass along to the Kelloggs, and no evidence that these people tried to keep the organization functioning. There is one reference in the petition narrative which refers to William Baker, a Brothertown descendant, traveling to New York in 1930 in order to attend a U.S. Senate Sub-Committee meeting to discuss the claims (BIN 2005, 21) but the petition contains no more information about any further activity on Baker’s part. It is also unclear whether this reference meant that Baker tried to continue the pursuit of the claims, or that he tried to investigate what had happened to the money Kellogg had already collected. There are no letters or documents indicating that the members of the “clubs” ever tried to maintain the organization after Orrin Kellogg died and Laura Kellogg withdrew her efforts. There are also no documents which indicate that the group as a whole organized to complain or protest against the actions of the Kelloggs. Rather, the “clubs” faded away with little more than complaints from a few individuals. Although many people may have been hurt by the Kellogg affair, there is insufficient evidence to demonstrate that it alone was the reason the group ceased nearly all political activity. Even at its height, the limited claims activities of the Six Nations organizations do not provide evidence of political influence under 83.7(c).

The 1934 Baptist Centennial

In 1934, the American Baptist Home Mission Society organized several events commemorating the centennial of the Church in Wisconsin. As the first Baptist church in Wisconsin had been founded by Brothertown Indians, the celebrations included several events detailing the history of the group. A minister named Coe Hayne appears to have contacted members of the Brothertown group in Wisconsin, as well as representatives from several of the Brothertown tribes of origin (specifically the Narragansett, Niantic, and Pequot) still living in New England. The Brothertown group and the New England Indians exchanged greetings with each other in 1934. The letter from New England was signed by six representatives (three Narragansetts, one Niantic, one Pequot, and one “Powhatan”), and on behalf of “. . . the Narragansett Indians of New England, gathered in Old Indian Meeting House, Charlestown Township, Rhode Island” (Williams et al. 7/22/1934, 1). In response, the Brothertown descendants replied with greetings of their own. The letter was not signed by a single representative on behalf of the group, but by 17 adult Brothertown descendants. Although Herman Niles (who was described by the petitioner as a “leader” of the Six Nations clubs) wrote the actual letter, there is no indication that he was the group’s leader, or one of a number of leaders recognized by the Brothertown descendants. The petitioner may wish to submit additional information to demonstrate that Niles or any of the other Brothertown descendants served as formal or informal leaders during the 1930s.

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101 The New England signatories all appear to have been members of the Algonquin Indian Federation, a pan-Indian group consisting primarily of members from a number of New England Indian groups.

102 Herman Niles attended Carlisle Indian School in Pennsylvania, served in the Army during World War I, and earned the nickname “Chief” during his baseball-playing days (Sebora 7/1955, 13). Many Indian athletes during this era were also nicknamed “Chief.” Other than having the nickname, there is little evidence that Niles served in any leadership capacity within the group.
Summary of Evidence of Political Influence, 1905-1949

The petitioner has not demonstrated that any single leader or body of leaders exercised political authority or maintained a bilateral political relationship with the Brothertown descendants between 1905 and 1949. The examples included in the record also do not identify any informal leaders, such as clergy, who advocated on behalf of group members. The evidence in the record does not identify any individuals or groups of individuals recognized as authorities by the larger group of Brothertown descendants.

The evidence presented for this time period shows two different non-Brothertown Indian leaders (Wild Pigeon of the Montauks and Laura Kellogg of the Oneida) motivating individual descendants to contribute information or money to their causes, but does not include any evidence of these individuals or any local Brothertown members advocating for the welfare of a group of specifically Brothertown descendants. The petition includes little to no information indicating that any Wisconsin Brothertowns had any influence over those descendants in Minnesota, or vice-versa.

Evidence Relevant to Political Influence 1950-1979

The evidence in the record for the period of 1950-1979 includes, but is not limited to, records of Federal acts, newspaper articles, interviews and personal correspondence.

The Indian Claims Commission

In 1950, some of the tribes collectively referred to as the “Emigrant New York Indians,” filed suit against the United States for lands purchased from the Menominee for the New York Indians (land known as the “Green Bay tract”), but then sold instead to white settlers. The suit was accepted by the Indian Claims Commission and was designated “Docket 75.” Four of the named plaintiffs represented the Oneida Tribe of Indians of Wisconsin, while two represented the Stockbridge-Munsee community. The Brothertowns, while identified in the filing as one of the historical parties who left New York to settle in Wisconsin, were not named in the suit. The suit specifically identified 3,612 Wisconsin Oneida and 510 Stockbridge-Munsee as constituting the Emigrant New York Indians, while stating that “no tribal organization now exists recognized by the Secretary of the Interior as having authority to represent the said identifiable group.” (NY Indians v. U.S. 8/4/1950, 2). There is no documentation in the petition indicating that the Oneida or the Stockbridge-Munsee approached the Brothertown descendants to take part in the suit, or that the Brothertown descendants attempted to mount their own suit apart from the other two groups. Nevertheless, when the claim was actually settled in 1964, the claim included the descendants of the New York Emigrant Indians “…as such group was constituted on June 25, 1832” (Indian Claims Commission Final Award 8/11/1964, 1). This group included the descendants of the Brothertown, even though there is no evidence that the Brothertown took part in this claims suit.

In order to proceed with the distribution of the claims award, the Secretary of the Interior required that rolls of the claimants be prepared. As the Oneida and Stockbridge-Munsee were
both federally recognized tribes, the suit required only the updating of the groups’ current membership rolls. However, the situation of the Brothertown was different. Instead, the Act of September 27, 1967 (“1967 Act”), stated that Brothertown descendants “... of at least one-quarter New York Emigrant Indian blood, and not members of either of the recognized groups mentioned...” would be eligible for payment (U.S. Congress 9/27/1967). As no current Brothertown roll existed, one would have to be compiled according to the stipulations of the 1967 Act.

The evidence in the record indicates that the Brothertown descendants did not have any organization or leaders at that time. An interview with Robert Fowler, the Brothertown man who would eventually help the descendants prepare the claims roll, described how he became involved with the claims process:

Well, there was a firm of attorneys from Chicago. That sued the United States government on behalf of the Brothertown Indians, and the Oneidas, and the Stockbridge Munsee for money to be reimbursed for land that the government took. And ah, somehow this firm got hold of me because I was an attorney. And so they wrote to me about this and so I wrote back to them and said I would be glad to help out... On behalf of the Wisconsin Brothertown Indians... I said I would take on the job of validating Brothertown Indians as to their 25 percent Indian blood and also documenting who they are and where they are... I worked primarily through the Bureau of Indian Affairs. I had them down in Fond du Lac on a couple of occasions so that they could give us some information as what was being done... and there were public hearings in Fond du Lac. And we notified everybody in the paper and we had at least two or three that I recall. Informational meetings. (Fowler 9/21/2004, 14)

There is no documentation in the record from the “attorneys from Chicago” (almost certainly the firm of Aaron, Aaron, Schinberg, and Ness, the firm that represented the Oneidas and the Stockbridge-Munsee). However, Fowler’s description of the chain of events is not that the group sought out the lawyers, but that the lawyers sought out the Brothertown in order to process the claim for their own clients. The evidence in the record also does not indicate that any group of Brothertown descendants identified Fowler or anyone else as a leader who the attorneys should talk to. Rather, the attorneys in Chicago identified him because he was a Brothertown descendant who was also an attorney. Further, Fowler seemed to be unclear as to the origin of the claim. He stated that it could have been the result of the claims initially put forth by the Kelloggs and the “Six Nations,” or that it might be the conclusion of the Kansas claims, never mentioning the “Green Bay tract” (Fond Du Lac Commonwealth 11/21/1967).103

Despite not having participated in the claims case, Fowler accepted the task of helping compile a list of eligible Brothertown descendants. Letters he wrote approximately eight days prior to the signing of the 1967 Act and then several months after the signing of the 1967 Act indicate that some Brothertown descendants were in touch with him, and asked his help in determining whether or not they would be eligible to take part in the claim (Fowler 9/19/1967, 1; Fowler 103 The same newspaper also referred to the award as a “grant,” rather than as a claims payment.
E.J. Riley, the superintendent of the Great Lakes Agency, responded with a summation of the regulations involved in compiling the roll, and also advising him that the appropriate applications would soon be available to him and other Brothertown descendants (Riley 12/5/1967, 1). Fowler gave a speech at the Fond du Lac County Historical Society on November 21, 1967, about the history of the Brothertown Indians, and the claims payment, and a report of his lecture was printed in the newspaper. The publicity surrounding his lecture caused a number of Brothertown descendants to seek him out for information regarding the claims, and it was in a letter to the Great Lakes Agency that he stated his intent to hold a public meeting to assist people in filing their applications, a meeting which “. . . would be done on my own behalf without compensation as many of these people are known personally to me” (Fowler 3/1/1968, 1-2). The Great Lakes Agency responded positively, and sent a representative to meeting (Riley 3/5/1968; Riley 4/18/1968). Approximately 75 people attended the meeting, as did Fowler and a representative of the Green Bay Agency (Fond du Lac Commonwealth 4/30/1968), but no document in the record identifies who these 75 people were.

The deadline for the submission of applications to participate in the claims was July 1, 1968, only two months after the Fond du Lac meeting. Information in the petition indicates that the Brothertown descendants filled out their forms quickly, and that the Green Bay Agency processed the applications with only minor difficulties. One 2008 interview specifically named Phillip and Eugene Tousey as two of the men who assisted Fowler in filing the applications (Tousey and Tousey 10/15/2008, 40). One newspaper article in the record does include a photograph of Fowler with Eugene Tousey, Myron Hammer, and James Sampson, but it does not indicate that the individuals were helping Fowler with the applications (Fond Du Lac Commonwealth 4/30/1968, 1). The petitioner may wish to include more descriptive material about the preparation of the 1967 claims, including who may have assisted Fowler, and describe just how this assistance was carried out.

The BIA received a total of 1,118 Brothertown applications, and determined that 646 individuals were of one-quarter or more New York Emigrant Indian blood (Carey 2/6/1970(a), 1; BIA 12/23/1969). The Bureau certified the initial Brothertown roll (“1967 Claims Roll”) on December 23, 1969, and later amended it to include an additional 57 people who had filed successful appeals or who had otherwise been determined to have met the requirements to be included on the roll. The final amended roll was certified on February 11, 1972 (BIA Roll Amendments 12/10/1970; Lightfoot 2/11/1972). However, the money from the claim was not distributed immediately because of a conflict among the Stockbridge-Munsee kept their roll from being completed. The BIA could not distribute the funds to any of the three groups without a proper accounting of how many claimants each group had, and determining which portion of the total amount would be shared by each group (Carey 2/6/1970(a), 1). Some of the Brothertown descendants, including Fowler, became impatient with the delay in distribution, particularly as

104 The two letters included the names of heirs of several of the people named on the 1901 Miller Roll. The first letter included the names of seven Brothertown descendants: two of Robert Fowler’s grandparents, his father, his father’s sister, and three of his father’s cousins. The second letter includes the names of several enrollees as well as some of their heirs, all of whom are relatives of Robert Fowler. A third letter, written after Fowler’s presentation at the historical society, included another list of 13 living Brothertown descendants, all of whom were relatives (Fowler’s brother and several first and second cousins) (Fowler 3/1/1968, 1-2).
the years went by (Carey 2/6/1970(b); Bulard 2/3/1972; Miller 10/19/1973, 1: Fowler 7/26/1974, 1-2). The claims checks were finally mailed in August 1974, and the Brothertown descendants received approximately $190 each.

Throughout the duration of the ICC case, there is no evidence that the Brothertown descendants organized any formal leadership structure. There is no indication that the group formed a council or committee to address their concerns with the distribution taking as long as it did. There is no evidence that any members of the group (elected or self-appointed) ever approached the leadership of the Oneida or the Stockbridge-Munsee with concerns regarding how long the distribution was taking.105 Outside of the claims distribution issue itself, there is no evidence to indicate what other issues may have been of concern to the members.

Robert Fowler, who had demonstrated some informal leadership during the length of the claims application process, restricted his activities to those related to the claims case. There is no evidence to indicate that he addressed any other concerns other descendants may have had during this time:

I went through that situation where we got our grant [sic]106 and that took so much of my time and it was all voluntary, you know, and I have no regrets about that, but I had met a lot of nice people, a lot of people that I didn’t know before, you know. . . . I just didn’t feel like I wanted to get back into something again that I, you know, would have to spend so much time on.” (Fowler 7/22/2001, 10)

There is no evidence that Fowler participated in subsequent legal actions pursued by the Brothertown descendants. Fowler stated in interview 2004 that he rarely attended group functions after the resolution of the ICC case (Fowler 9/21/2004, 21).

Once the government distributed the claims proceeds to the Brothertown descendants, there is little indication of any attempt to create a more formal organization. One 2008 interview maintains that the Wisconsin descendants discussed the matter informally at family get-togethers, but does not provide any specifics regarding the larger body of descendants meeting or organizing during this time (Tousey and Tousey 10/15/2008, 42). Another 2008 interview with a former Minnesota resident stated that he remembered talking about the family’s genealogy at their family reunion, but did not indicate that the group formed any organization during this time (Gramentz 10/15/2008, 36). No leaders or governing body developed between 1974 and 1980. The petition record includes some information one family encountered problems with the Great Lakes Agency, who had offered some education funds to Brothertown descendants, and then withdrew them on the basis that the Brothertowns were not a federally recognized tribe (Fosdick, 8/18/1978, 1). There is no indication that the parents or student united with any other Brothertown descendants or contacted anyone in a leadership position among the Brothertown

105 Loretta Metoxin, who was the Oneida tribal secretary during the time of the claims settlement, remembered the Oneida meeting with the Stockbridge governing body during this time. She did not remember the Oneida meeting with any group of Brothertown descendants (Metoxin 10/16/2008, 21).

106 Both Fowler and the local newspaper erroneously referred to the claims payment as a “grant.”
descendants to appeal the State’s decision. The information in the record indicates that the student dealt with the matter by writing to elected officials (Baldwin 10/10/1978, 1; Proxmire 10/19/1978, 1). The Great Lakes Agency temporarily resumed providing educational funds to Brothertown descendants, but there is no indication that this resumption was the result of any combined effort from the Brothertown descendants.

Summary of Evidence of Political Influence, 1950-1979

The evidence in the record does not demonstrate that Robert Fowler or any other individuals exercised political influence among the Brothertown descendants. Participation in claims activities can be good evidence of political influence and authority, but only as part of a larger body of political activity. The evidence in the record indicates that the claims activity was the only thing occurring at this time. Further, there is no indication that the descendants took the opportunity of the claims case to organize into a group to further any common interests during the time they waited for the settlement, or after the distribution of the payments. Those individuals who encountered difficulty in securing educational funding because of Brothertown’s non-federally recognized status addressed the problem on their own.

Evidence Relevant to Political Influence 1980-Present

The evidence in the record for the period of 1980-present includes, but is not limited to, various Federal and State records, records of Federal acts, newspaper articles, meeting minutes, newsletters, interviews and personal correspondence.

In 1978, the Department of the Interior instituted the Federal Acknowledgement Project (FAP) in order to provide an administrative process for Indian groups who were not already acknowledged as federally recognized Indian tribes. In 1979, the agency instituted a project to locate groups who might wish to petition under the FAP process.

Two letters in the petition documentation appears to be a response to this project. The first, dated September 18, 1979, included a list of names of four Brothertown descendants in Calumet and Winnebago Counties given to Gregory Miller by Harland Welsh of Gresham, Wisconsin (Miller 9/18/1979, 1). Two of these individuals had addresses in Chilton (Rose Welch Moon and Della Welch), while the other two (brothers Emmett and Floyd Pendleton) were living in New Holstein and Kaukauna respectively. All four of these people were distant cousins of Harland Welch, a resident of Gresham. The letter also identified three other individuals said to be interested in organizing the group; Mrs. Elmer Welch, Mrs. Melvin Kazik (both of Bowler), and Mrs. Marie Welch (of Gresham). A second letter dated September 21, 1979, also addresses the

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107 In 1980, another family encountered the same difficulty. The members who had received educational assistance as Brothertown Indians received notification that, because the group was not federally recognized, they would no longer be eligible to receive educational funds (Mooney 5/12/1980, 1). Although the body formed by Jacobs had been in existence for five months, there is no indication that the members turned to the leadership of the group for assistance. They, like the earlier family, wrote letters to a number of elected representatives trying to have the funding reinstated (Anton 6/20/1980(a), Anton 6/21/1980(b), Anton 6/21/1980(c), Brown 6/24/1980(a), Brown 6/24/1980(b)).
subject of “Brotherton” Indians in Calumet and Winnebago Counties. A letter from Superintendent of the Great Lakes Agency named the “Brotherton” as one of three groups (along with the Tripoli/McCord Chippewas, and Kansas Potawatomis) who might wish to petition, and included a list of “Brotherton” Indians residing in Calumet and Winnebago Counties (this list was not included in the petition documentation) (Manydeeds 9/21/1979, 1). Neither of these letters mentions any of the residents in Fond du Lac (including Robert Fowler), although the list attached to the September 21 letter may have included some names from the Fond du Lac area. The letters indicate that the BIA employees and agents who received these letters were familiar with the Stockbridge reservation and with some of the descendants who had ancestry that also traced to Brothertown.

The group held its first meeting regarding organizing the Brothertown descendants on January 3, 1980, at the Stockbridge-Munsee Community Building. The minutes from the meeting named eight Brothertown descendants specifically, but did not indicate how many people in total attended the meeting. Those in attendance elected Anna Jacobs as the group’s first chairperson. Anna Welch Jacobs (1922-1992), a Jason Potter descendant, was a descendant of one of the Brothertown families that moved to Shawano County and the area of the contemporary Stockbridge reservation sometime in the late 19th or early 20th century. She and three of her nine siblings married Stockbridge descendants. There is no indication in the record of the family being politically prominent among the Brothertown descendants or among the Stockbridge. Those who are named in the minutes of the January 3, 1980, meeting were either siblings of Anna Jacobs (Marie Welch Robinson) or children of Flora Welch Bruette Robinson (Arnold Bruette, Earl Robinson, Goldie Bruette Schreiber, Marcella Bruette Besaw, Madeline Bruette Crows, and Adele Bruette Heinz). The Bruette/Robinson siblings were descendants of Lucinda Brushell, and their family had lived in Shawano County since approximately 1910. There is no indication that letters or phone calls were made to descendants living across the rest of the State, or if any newspaper advertisements had been placed to notify people of this meeting. The petition documentation contains an undated (circa 1980) one page “Brotherton [sic] Mailing List” of 13 people, 11 of whom lived in or near Gresham (the other two were close kin to the others in attendance). The list included 7 Bruette/Robinson siblings, 4 Welch siblings (Anna Welch Jacobs and 3 of her sisters), a distant Welch cousin, and one man surnamed Jacobs not included in the petitioner’s database. This list indicates that the initial stages of organization were concentrated among two families living close to the Stockbridge reservation, rather than among the broader group of Brothertown descendants or among the larger population in and around Fond du Lac.

On January 4, 1980, Anna Jacobs wrote, “A few weeks ago Gordon Burr asked me if I would attempt to organize the Brotherton [sic] tribe, since they are one of the unacknowledged Indian groups it would be desirable to organize” (Jacobs 1/4/1980, 1). She requested that a copy of the present rolls be sent to her as a representative of the group. The Great Lakes Agency then provided her with a copy of the 1967 Claims Roll, as well as a copy of the 1901 Miller Roll and the 1839 Allotment List (Manydeeds 4/14/1980). The group submitted its initial Letter of Intent to petition for Federal acknowledgment on April 15, 1980 (Reeser 5/16/1980, 1).

A newspaper article included in the petition submission stated that “a committee. . . has been trying since January to track down 702 people believed to be descendants of the Brothertons
This indicates that the group was using the 1967 Claims Roll as its basis for locating other descendants, as the 1967 Claims Roll contained the names of 702 people. No information in the petition record indicates whether additional newspaper ads had been placed, or if people had been contacted by letter regarding membership in the new organization between January and December 1980.

A 1981 notice in a nationwide Indian newsletter announced that the group was trying to locate its members in order to update its membership roll (Wassaja 1/1981, 5). The notice identified Phyllis (Tousey) Frederick as the group’s contact person, a name that had not appeared in any of the previous documents. Tousey (who no longer uses the Frederick surname), a Coyhis descendant, also had a number of relatives in the Stockbridge tribe. It is unclear how Tousey became involved, but her family’s ties to the Shawano County residents who had already organized the group and the involvement of her father and uncle in the work already done by Robert Fowler may have lead to her own involvement. The Tousey family soon became involved in many of the group’s activities. In June of 1981, the Touseys organized the group’s first annual picnic, and a newspaper article recording the event repeats that the group continued to look for “lost” members (Fond Du Lac Commonwealth-Reporter 6/21/1981, 1). The article also said the group currently had 300 members, but there is no discussion of who these 300 were (the petition documentation does not contain a membership list from 1981). The same article identified “Phyllis Frederick” as the group’s “publicity coordinator,” but also referred people with information to either Anna Jacobs or Harry Tousey, Phyllis Tousey’s uncle.

Anna Jacobs resigned as the chair of the group in October 1981 (Jacobs 10/14/1981, 1). According to her letter of resignation, “I feel that I do not want to put in any more of my time or money”, which may indicate that she underestimated just how much work the position required. Earl Robinson, the group’s secretary, also resigned his position (Brothertown Nation Minutes 10/17/81, 2), but offered no explanation. At the time of their resignations, four of the seven remaining members of the “Brothertown Nation Executive Committee” were originally from or currently living in Shawano County (Ray Hashbarger, Marie Robinson, Madeline Crowe, Arnold Bruette) (Hashbarger et al. 10/27/1981, 1-2). The three Touseys descendants (Harry Tousey Sr., his son Leo Tousey, and his niece Phyllis Tousey) did not live in Shawano County, but had close and active kin ties to several people and families who lived in the area.

The evidence in the record indicates that more group members from outside the Gresham/Bowler area were beginning to become involved at this time, particularly those in the Fond du Lac area. Soon after Jacob’s resignation, the group instituted a newsletter, the Brotherton Messenger, to disseminate information to group members (Brotherton Messenger 11/1981, 1). The group held its first Fond du Lac meeting at a local church in November 1981, and approximately 40 people attended (Brotherton Messenger 12/1982; 1/1983, 1). The group also elected a number of new members from across the state to various positions on its governing body, which it now referred to as a “council” rather than a committee. Marie Robinson, Anna Jacob’s sister succeeded her as Council chair, and Barbara Baldwin of Sheboygan, Wisconsin, a Wiggins descendant, was elected to the office of Secretary. However, by February 1982, treasurer Madeline Crowe and

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108 The group appears to have divided its governing body into two groups consisting of four “Officers” and five “council members” (Baldwin 1/5/1982, 1-2).
council member Ray Hashbarger, both Gresham area council members, also resigned (Brothertown Messenger 4/1982, 3). There is no reason given for these resignations in the documentation. They were replaced by members from other areas. By the time the group held its next election, in May of 1982, only one council member (Earl Robinson, the former secretary) was from Gresham.109 The group soon proposed to move the “tribal headquarters” from Gresham to Fond du Lac, and eventually voted 29-1 to do so (Brotherton Messenger 8/1982, 15), but still held occasional meetings in Gresham.110 The petitioner may wish to include more research on the institution of the group, the role of the early members of the group’s council, and an explanation of how the leadership of the group shifted away from members in the Gresham area.

June Ottery Ezold (1922-2007), a Clark Sampson descendant, replaced Marie Robinson as the group’s leader in 1982, and would remain the chair for the next 21 years. Ezold, a retiree, devoted her full time and energy to the Brothertown cause, and she quickly set about running the organization. In the initial years of her leadership the group addressed a number of issues primarily relating to Federal acknowledgment. These included issues such as researching possible sources for funds in order to complete the petition. The group formed a non-profit corporation, Brothertown Nation, Inc. in June 1982 (Brothertown Indian Tribe-Discover Our Heritage 1983, 1) and, in addition to applying for grants, held bake sales, rummage sales, and collected aluminum cans to raise funds for the acknowledgment effort. Members on a number of committees researched the group’s history and member’s genealogy. As 1982 would mark the 150 year anniversary of the Brothertown’s arrival in Wisconsin, the group also began to make preparations for activities to commemorate the event, including having the governor of Wisconsin issue a proclamation about the Brothertown’s contributions to Wisconsin history (Brotherton Messenger 12/1981-1/1982, 1) and creating a traveling exhibit to educate other Wisconsin residents about the history of the group (Brotherton Messenger 6/1982, 4). The Brothertown group continued the summer picnic and reinstituted Homecoming in October of 1983. The leadership also offered to support the efforts of college students who applied to receive an Indian Educational Grant (Brotherton Messenger 1/15/1983, 3). In 1983, the Oneida Tribe of Wisconsin passed a resolution supporting the group’s effort to become federally acknowledged; two years later, the Stockbridge-Munsee Tribal Council passed a similar resolution of support (Oneida Tribe of WI Resolution 5/6/1983, 1; Stockbridge-Munsee Resolution 8/20/1985, 1).111 In 1984, the Brothertowns entered into an agreement with Marian College which allowed them to store their research materials in the campus library (Fond Du Lac Reporter 11/4/1984, 1).

109 Over the years, the group has held “regional meetings” in a number of locations across the state of Wisconsin in order to encourage the participation of members who lived outside of the Fond du Lac area. These areas include Milwaukee, Madison, Racine and Fox Valley (BIN Newsletter 9/1992, 3-4)

110 The group continues to hold one meeting each year in Gresham, and also instituted a meeting in Minnesota in 1993 (Attendance List Annual Minnesota Meeting 4/3/1993, 1).

111 The Oneida tribe has been especially supportive of the Brothertown’s efforts. In 2003, the tribe allocated $75,000 to purchase some historical documents from a private collection in order to hold them in trust for the Brothertown (Metoxin 10/18/2008, 26-28). Unfortunately, the tribe was not able to complete the purchase due to a disagreement with the owner, although the tribe maintains that the funds are still set aside for their purchase if the owner chooses to sell.
The group continued to work on its petition for acknowledgment, but in September 1987, the council announced that it was going to pursue a lawsuit for Federal acknowledgment (BIN Newsletter 6/20/1987, 1). The council met several times with representatives of the Native American Rights Fund (NARF) to discuss the possibility of suing on the grounds that the 1839 Act that had made the Brothertowns citizens had been reversed by a 1878 Congressional act (BIN Newsletter 9/1987, 5). NARF also encouraged the group to collect information from its members via questionnaires (later designated a “needs assessment survey”), which it sent out in December 1988 (Roessel 12/2/1988, 1; BIN Newsletter 12/1988, 1-3; Brothertown Indians Organizational Master Plan 1/1993, 8). In 1991, NARF wrote a letter requesting that the BIA begin providing services to the Brothertowns based on an August 28, 1990, solicitor’s memo which offered the opinion that the 1839 Act which granted citizenship to the Brothertown Indians did not “terminate” Federal recognition of the group (Rogers 11/12/1991, 1-2). NARF continued to write letters on behalf of the Brothertowns and continued to insist that the group be treated as a federally recognized tribe without having to go through either administrative acknowledgment or legislative recognition (Rogers 1/16/1992, 1-2; 6/23/1992, 1-8). At one point, the group issued a resolution stating that it was a “Federally recognized Indian Community” and entered into an economic development contract with an organization called VanBarCot Incorporated (BIN Resolution 9/18/1992, 1), a company whose secretary/treasurer was a Brothertown member. June Ezold and Brothertown member/VarBarCot Inc. representative Craig Cottrell traveled to Washington DC in February 1993 to meet with representatives from the Department of the Interior, including a member of the Bureau of Acknowledgment and Research (BAR). Later, Ezold wrote to then Assistant Secretary, Indian Affairs Ada Deer that “we got wind of the reason BAR wanted our petition. They will use the information we spent countless hours and money on, against our acknowledgment as an Indian tribe” (Ezold 7/31/1993, 1). Michael Lawson, Acting Director of Tribal Services, wrote back to assure her that the reason for the request had nothing to do with any desire to use the group’s materials against them, but that it was the goal of BAR to work with the group to see that it submitted the best and most complete petition possible. However Lawson emphasized it was still BIA policy for all groups, even those with an ambiguous history regarding Federal acknowledgement, to go through the administrative process (Lawson 8/19/1993, 1).

A 1993 solicitor’s opinion further emphasized that the group would need to continue in the petition process in order to receive Federal acknowledgement. The opinion found that, while the Brothertown tribe may not have been officially terminated by Congress, the contemporary group had not demonstrated that it consisted of the lineal descendants of the historical tribe or that the groups’ members had maintained tribal relations. The group was eligible to petition for acknowledgement, but it would not be automatically granted Federal acknowledgement (Ethridge, 8/19/1993).

With this letter, the group resumed work on the necessary petition documentation.112 Some of the work, particularly issues regarding genealogy and membership, had never stopped. The group had closed it membership rolls in September 1986, as the group had initially planned to

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112 The group appears to have ended its relationship with both NARF and VarBarCot Inc. sometime in 1993, but the documentation in the petition is not entirely clear.
submit its petition soon after (BIN Newsletter 10/1986, 4; 3/1987, 1). The record contains several examples of the group’s leadership rejecting members who did not descend from either an ancestor on the 1901 Miller Roll or the 1839 Allotment List. The group voted to reopen the rolls in March of 1992 for reasons that are not entirely clear, and there are no meeting minutes in the petition documentation to explain why the group took this action (BIN Newsletter 3/1992, 4-5). The leadership had stated that rejected files would still be kept on hand and reviewed if the rolls were reopened, and the reopening of the rolls gave rejected members another chance to submit necessary documentation to secure their place in the group; however, it is not clear if the applicants admitted after the 1992 opening had been among those who had previously applied and been rejected. The group continued processing membership applications through 1995. The group stopped processing applications while it finalized its membership roll as part of its 1996 documented petition submission.

In 1992, the group also held its first Minnesota regional meeting in Little Falls, a town approximately 400 miles from Fond Du Lac but somewhat central for the Minnesota residents. The petition documentation in the record did not include any minutes from this meeting, but the event was referenced in the minutes for the 1993 Minnesota meeting (Attendance List Annual Minnesota Meeting 4/3/1993, 2). Several members of the council traveled to Little Falls for the 1993 meeting in order to meet with members, inform them of the group’s progress, and answer any questions they had. At the time, the bylaws of the group stated that only Wisconsin residents could hold elected office in the group, so the Minnesota residents had no representation on the council. This issue appears to have caused some concern that the Minnesota residents might form their own group, and Ezold urged the Minnesota residents not to take such action. The Minnesota members choose to remain part of the group and held additional regional meetings.

The group made its first documented petition submission to BAR on February 7, 1996 (Stearns 2/27/1996, 1). Much of the work appears to have been performed by a core group of extremely enthusiastic members, while few of the other members participated. Many newsletters among the petition materials tried to encourage more members to participate in the group’s activities. In 1996, the group reported that, out of 2100 members, only 44 cast votes (either in-person or by absentee ballot) in that year’s election (BIN Quarterly Report 6/1996). While the group waited for its petition to be reviewed, the leadership continued reviewing membership files, applying for grants to fund the organization, and undertaking educational training to enable the group to function as a government.

The group continued to solicit donations from its members to try and purchase land in Brothertown specifically to have a “tribal” office (and eventually a museum and other facilities). The group had maintained a “building fund” for years, but had been unable to afford any of the property available in the area of the original Brothertown reservation. The need for office space had become more urgent as the group had had to vacate the Marion College library, where they

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113 The group also opened and closed its rolls on two other occasions, primarily to handle backlogs of applications (BIN Newsletter 1/1998, 2; BIN Newsletter 3/2003, 6).

114 This exclusion appears to have resulted from the council also serving as the Board of Directors of the group’s non-profit corporation. According to the rules of the non-profit, all board members had to be Wisconsin residents (Attendance List Annual Minnesota Meeting 4/3/1993, 4).
had stored their materials since the 1984. The group was able to obtain some storage space at another location in Fond du Lac, but the request to vacate Marion College brought the need for dedicated office and archival space to the fore. In April 1998, the group instituted a campaign to raise $250,000 to purchase 100 acres of land to establish a “tribal headquarters” in Calumet County (BIN Newsletter 5/1998, 4). In another bid to strengthen their ties to the area of the old reservation, the group met with, and joined the Union Cemetery Association of Brothertown to help the members maintain the cemetery where many Brothertown descendants were buried (BIN Newsletter 8/1998, 1; BIN Newsletter 11/1998, 1).

In 1998, the BIA wrote to the group asking for comment on its proposal to consider waiving the priority provisions of 25 C.F.R 83.10(d) to place the Paucatuck Eastern Pequot (PEP) group on active consideration at the same time as the related Eastern Pequot group (EP). The PEP group was sixth on the list of groups on the “Ready, Waiting for Active Consideration” list, and the Brothertown was fifth; therefore, reviewing the PEP petition would place it ahead of the Brothertown petition (Maddox 2/24/1998, 1). Ezold replied that, while the group understood the rationale behind reviewing the two petitions together, it was concerned that “skipping” the PEP petition would delay review of the Brothertown petition.

In September 1999, the group received an Administration for Native Americans (ANA) grant and was able to secure office space in Fond du Lac (BIN Newsletter 11/1999, 4). Between January 1 and February 29, 2001, the group mailed a “Housing Needs Survey” to 780 enrolled heads-of-household and received 270 responses. The questionnaire addressed the subject of whether or not members would consider relocating to Calumet County if the group were to develop housing opportunities there, but the responses indicated that very few would consider such an option (BIN Newsletter 3/2000, 1). The group later entered into a partnership with the Wisconsin Housing and Economic Development authority to secure tax-credits towards the construction of a senior citizen affordable housing building to be owned by the Brothertown Nation, Inc., but did not receive the requisite funding (BIN Newsletter 9/2003, 7; 12/2003, 13).

The group continued to hold regular meetings, elections and social events over the next few years. In January of 2002, a group calling itself the “New York Brothertown Tribal Nation” gained some brief attention protesting the Wisconsin Brothertown’s bid for federal recognition (Norwich Bulletin 1/1/2002, 1), but the group appears to have disappeared as rapidly as it had appeared, even before the Wisconsin group could prepare any response. The group also worked on amending its constitution, and proposed a major change to its membership criteria by adding the 1967 Claims Roll as one of the documents applicants could trace to in order to prove descent (BIN Constitution 9/14/2002). No documentation included in the petition explains why the group made this change, as the group had noted as far back as 1986 that the 1967 Claims Roll was a descendancy roll of New York Emigrant Indians, and not a membership roll.

115 The group did eventually purchase some land in Brothertown in 2002 (BIN Newsletter 9/2002, 1), but the parcel (a three-quarter acre plot with a garage purchased for $23,200) was far more modest than the group’s initial plans.

116 In 1998, the group began a project to have a state highway marker placed in Brothertown. The project, championed by member and future Brothertown chairman Theodore Stephenson, was approved and the marker, erected July 25, 1999, and dedicated September 25, 1999 (Historical Marker 1999, 1-14; BIN Newsletter 9/1999, 6).
At the 2002 annual Homecoming, June Ezold announced that, after 20 years of near constant activity, she would not run again for the office of Chairperson after holding the office (BIN Newsletter 12/2002, 3). Throughout her time as tribal chair, she and those who supported her had tirelessly promote the Brothertown cause. Some members found her leadership style controlling and felt she was unwilling to listen to other people’s ideas or suggestions, but she was undeniably devoted to the goal of attaining Federal acknowledgment. When she finally left office, the group gave her the title of “Chairperson Emeritus” and contributed a plaque in her name the Smithsonian Institution’s Museum of the American Indian (BIN Newsletter 6/2003, 2).

In the spring of 2003, Sophia Sampson/John Coyhis descendant Theodore Stephenson (1931-2009) took the office of Chairman of the group. Stephenson, a retired engineer and former professional musician, had a very different management style than June, and, while just as dedicated to the goal of Federal acknowledgment as June, placed an emphasis on organizing the documents and items in the group’s possession. Further, he was more emphatic about the need for members to contribute to the group both financially and through participation, and wanted the group to take a more systematic approach to meet the criteria for achieving Federal acknowledgment (Stephenson 9/24/2004, 16-18). For example, he instructed the group’s genealogist to identify several “family leaders” in the group, and then contacted them with instructions to organize their own family picnics (BIN Newsletter 3/2004, 3). Stephenson eventually resigned sometime between September and December 2004 for unspecified reasons.

Stephenson’s vice-chair, David Lambert (b. 1954), a Hannah Potter descendant, replaced him as the group’s leader in December 2004. Lambert’s family had become active in the group approximately five years earlier, and his mother was also the group’s treasurer. Lambert continued the pursuit of acknowledgment, garnering letters of support from Federal and State officials (LaFollette 8/1/2005, 1; Petri 9/12/2005, 1; Doyle 10/10/2005, 1; Breske 11/2/2005, 1), and from one additional federally recognized Wisconsin tribe, the Menominee (Menominee Indian Tribe of Wisconsin Resolution 11/17/2005, 1). Under his administration, the group also began to operate a bimonthly bingo game at a local civic arena as a fundraiser (BIN Newsletter 9/2005, 2). In December 2005, the group submitted supplemental petition documentation to the Office of Federal Acknowledgment (formerly known as BAR), including an updated membership list and a supplemental petition narrative (BIN 2005), and in January 2006, announced that the group had held a groundbreaking ceremony on a 24-unit affordable senior housing project in Fond du Lac (BIN Newsletter 1/2006, 2). However, in June 2006, Lambert and his mother were both removed from their positions on the council because a check of genealogical records called into question their descent from the historical Brothertown tribe (Schreiner 7/15/2006, 1). The issue of the Lambert’s removal was one of the few issues

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117 Theodore Stephenson’s mother, Vern Quinney Stephenson, had a number of Brothertown and Stockbridge ancestors. In his 2003 campaign biography, Stephenson identified “Sarah Wiott” as his ancestor; however, there is no information in the petitioner’s genealogical database connecting him to Sarah Wiott.

118 The bingo games became a source of controversy in 2008, when allegations related to the improper handling of funds lead to the group relinquishing its bingo nights (Kraintz 10/20/2008, n.t., Stephenson 10/21/2008, 4-9).

119 Richard Schadewald, the group’s current chair, also described a disputed 2006 election, in which the election committee shredded the ballots (R. Schadewald 10/15/2008, n.t.) However, none of the 2006 documents submitted
identified by members as a cause of controversy and discord in the group (Gramentz 10/15/2008, 98-104; Shady and Shady 10/23/2008, n.t.; Andler, 10/17/2008, n.t.; Kroenke 10/19/2008, n.t.) and remains a source of controversy as of this writing (see discussion “Conflict Among Group Members” under this criterion). It is also unclear if the senior housing project went any further than the groundbreaking (R. Schadewald, 10/15/2008, n.t.).

Lambert’s vice-chair Mark Schreiner, a Kindness/Fowler descendant, assumed the position of chairman after the removal of David Lambert. The petition submission does not contain any additional newsletters, but does include minutes from several council meetings. During his tenure, the group continued many of the same tasks as before, including amending the constitution, recruiting volunteers to help with the group’s numerous fundraisers and other committees, and processing enrollment applications. Forty-six percent of the group’s 1,880 eligible voters (886 members) participated in the election, and voted overwhelmingly (827 to 39) to accept the changes to the constitution on January 20, 2007 (BIN Constitution 1/20/2007, 1).

One substantial change between the constitution submitted to OFA in December 2005 and the constitution ratified in 2007 was the introduction the office of “Peacemaker”, a position that no member had held since the 1840s. The original Peacemakers served as leaders and as a judicial body among the original Brothertowns in New York, and the contemporary group intended for the new body to serve as a type of appellate court (BIN Constitution 1/20/2007, 11). Information in the petitioner’s 2008 supporting documentation indicates that the Peacemakers were instituted as an appellate body in response to the Lambert enrollment issue (BIN 2008, 65). The group swore in its first four Peacemakers at the 2007 summer picnic (BIN Minutes 7/21/2007, 4).

Richard Schadewald (b.1957), a George Skeesuck descendant, replaced Mark Schreiner as the group’s chairman in June 2007 (BIN Minutes 6/16/2007, 1). Schadewald appears to be the first chairman descended from the Minnesota Brothertown descendants, although he has lived in Wisconsin for most of his adult life. As a high-school history teacher and as a 16-year member of the Brown County board, he came to the position with considerable academic and administrative experience. Under his leadership, the group submitted additional petition documentation, including an updated 2008 membership list and an additional petition narrative (BIN 2008, 65).

At some unspecified point in 2007 or 2008, the group’s enrollment committee received a large number of applications from people who were definitely Brothertown descendants, but who had had no previous contact with the group. The group’s leadership eventually learned that the Stockbridge and Oneida enrollment officials referred a number of these people to the Brothertown group (Kroenke 10/19/2008, n.t.). As both tribes had (and have) one-quarter blood degree requirements, many people with a non-Indian parent could not qualify for membership in the tribe of their parent. However, many of these people cold trace to a Brothertown ancestor, and Brothertown did not have blood degree requirement. Although this had actually been going on for a number of years (Gralewitz 10/15/2008, 24-26), the sudden upsurge in the number of applicants so close to the petitioner’s going on “active” status alarmed members who feared that large numbers of unknown people could enroll in the group and destroy the integrity that it had by the petition describe how this situation occurred, and the petitioner’s 2008 petition narrative supplement is silent on the subject. The petitioner is encouraged to submit more information and analysis of the disputed 2006 election.
established over the years. It led the group to propose closing the group’s roles permanently and instituting a “cradle roll” for newborns (BIN Council Resolution 5/17/2008(a); BIN Council Resolution 5/17/2008(b)). There are no minutes indicating whether this resolution passed, but OFA’s 2008 interviews indicate that the group approved this measure (Andler 10/17/2008, n.t.; Kroenke 10/19/2008, n.t.).

**Conflict Among Group Members**

Conflict, and the resolution of conflict, has been used by a number of petitioners to demonstrate political processes within the group. Conflicts can provide valuable information regarding the priorities of the group, as they make explicit what members feel strongest about. Conflict can also demonstrate how the intervention of leaders, both formal and informal, can resolve or help to resolve issues.

The BIN petitioner submitted few examples of any conflicts within the group. Regarding the initial formation of the group in 1980, the 1995 petition narrative stated, “Soon after the organization was formed and operating a number of disputes occurred over policies and directions, resulting in the resignation of Anna Jacobs in 1981 as tribal chairperson” (BIN 1996, 127). However, the narrative did not state what these disputes were or name the individuals involved and what issues they supported. None of the documentation from that period indicates any factions or interest groups within the petitioner expressing any firmly held positions.

Information included in the petition submission indicates that there have been relatively few conflicts within the group’s membership. One subject that has occasionally caused some disagreement among members has been the role of Christianity and “traditional Indian spirituality” within the group. Some members have occasionally written to the newsletter or otherwise commented that they believe that, because the Brothertowns were Christian Indians, members should practice Christianity and disavow things such as “smudging” (burning tobacco, sage, or other herbs). Others believe in incorporating more “traditional” practices into events such as the Homecoming while acknowledging that the historical Brothertowns were Christians. These issues have not escalated to the level of a conflict.

The subject of tribal enrollment has been one area where some members have recently voiced disagreement with the tribal leadership. In years past, a number of people have been determined ineligible for enrollment because of their inability to trace their descent to either the 1839 Tribal

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120 The “cradle roll” ordinance also included a stipulation that all children entered onto the roll have to be presented to the group at a council meeting or community function in person before their fifth birthday. OFA staff attended the group’s Homecoming celebration, but did not see or hear anyone presenting their child to the group.

121 The “traditional” spirituality and religious practice of the Brothertowns is Presbyterianism (Samson Occom was an ordained Presbyterian minister who specifically founded a community of Christian Indians). Some members of the contemporary group are members of various Christian denominations and eschew any “Indian” spirituality. A few members have studied the history of the group and have studied the New England Christianity practiced in the tribes of origin before the Indians relocated to New York and formed the Brothertown tribe. Others have become interested in what might be best described as “pan-Indian spirituality,” particularly that of the Great Plains (specifically the Lakota and Chippewa).
Roll or the 1901 Miller Roll. None of the interviews indicated that this enrollment issue was of major importance to the group, although people did express concern or sympathy for their relatives and friends who could not meet the enrollment standard. However, in 2007, the family of former BIN Chairman David Lambert was removed from the group’s rolls because the enrollment committee determined that the family did not meet the enrollment criteria. Specifically, the enrollment committee found insufficient data to acknowledge the Brothertown ancestry of Lambert ancestors Hannah (Potter) Welch or her husband, Thomas Welch (Gramentz 3/16/2007, 1). Lambert’s mother Nancy (Welch) Lambert had served as the group’s treasurer, and submitted an appeal. She also had a number of friends within the group who supported her appeal, and who were particularly vocal in their support of the Lambert’s reinstatement. All of the members interviewed by OFA were aware of the issue, and expressed their own opinions on it. OFA also interviewed Nancy Lambert, who expressed her particular view of the enrollment committee and the events that led up to her family’s removal. Lambert’s appeal has continued under the “Peacemakers,” a body established in 2007 to serve as the group’s judicial branch.

Another issue that has concerned the group has been the management of the group’s non-profit bingo operation. In July 2005, the group began hosting bingo at the Fond du Lac Spectrum (a local civic auditorium) twice a month, staffed by Brothertown volunteers and spouses (BIW Newsletter 9/2005, 10). On occasion, the people managing the bingo allowed another non-profit organization to help, and compensated them for their assistance. This turned out to be a violation of the rules, and eventually led to the group turning over their bingo night to another organization in 2008. Bingo had been a very lucrative endeavor, and accusations regarding mismanagement of the bingo led to hurt feelings among various members. Although the members interviewed in 2008 knew that the group was no longer hosting the bimonthly bingo games, the issue was not of major concern to many people. While it was important to some of the local Fond du Lac area residents who had attended as players or volunteers, most members had never participated in the bingo enterprise.

Summary, Political Influence 1980-Present

Since the inception of the organization in 1980, the Brothertown organization has dedicated most of its energy to pursuing Federal acknowledgment. The leadership under June Ezold implemented a number of programs to serve its members, as well as creating a number of committees and boards which encouraged member’s participation. The group also attempted to keep members informed and involved by holding council meetings in a number of different communities so that members who lived outside the Fond du Lac area would not always have to travel. The group also established a newsletter and a website. The information included in the documentation does appear to indicate that the council is responsive to the concerns of the members, and that the members consult the council with problems they feel should be addressed.

At the same time, the activities described in the petition submission are of relatively recent origin. The initial organization was not the formalization of a previously-existing entity, but was formed by the gradual accumulation of descendants, many of whom did not know each other.

122 Lambert also attended the 2008 Homecoming, which OFA staff also attended. No one confronted Lambert or prohibited her from taking part in the event.
Brothertown Indian Nation (Petitioner #67) Proposed Finding
Criterion 83.7(c)

There is no indication that there are any interest groups within it (divided along residential or ideological lines), and little evidence of conflict within the group that might help to understand what issues (other than Federal acknowledgment) are important to the group.

Conclusion

The evidence in the record does not demonstrate that authoritative, knowledgeable external observers identified leaders or a governing body of the petitioning group on a substantially continuous basis since the date of last Federal acknowledgment. Therefore, the petitioner does not meet the requirements of criterion 83.7(c) as modified by section 83.8(d)(3) for the historical period prior to “at present.” Alternatively under the provisions of section 83.8(d)(5), the petitioner does not meet the requirements of criterion 83.7(c) since 1839 without using the reduced evidentiary burden provided by section 83.8(d)(3). The evidence in the record indicates that the petitioner does not satisfy the requirements of criterion 83.7(c) at any time from 1839 to the present. Therefore, the group does not meet criterion 83.7(c).
Criterion 83.7(d)

83.7(d) A copy of the group’s present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

Introduction

The BIN petitioner has submitted a governing document that describes the group’s governing procedures and membership criteria, thus meeting the requirements of criterion 83.7(d).

Governing Document

Current Governing Document

OFA received a governing document entitled “Constitution of the Brothertown Indian Nation amended Jan. 20, 2007” with the BIN submission on March 10, 2008 (BIN 1/20/2007). According to the BIN website, on the “Constitution Ratification Letter” page, the general membership approved the governing document on January 20, 2007 (BIN 2008, 46). The petitioner submitted no meeting minutes for that date or meeting minutes for a later date that reported the membership vote. The document contains a preamble and 14 articles addressing territory and jurisdiction, membership, civil rights, the “tribal council,” powers of the “tribal council,” judiciary, council of elders, conflict of interest, oath of office, sovereign immunity, “savings” (previous enactments), severability, amendment, and initiatives. OFA also received, on March 20, 2008, a seven-page Enrollment Ordinance that the BIN group had adopted on May 12, 2007 (BIN 5/12/2007).

Previous Governing Documents

Governance and Membership as Presented in Governing Documents

Governance

Article IV of the BIN 2007 constitution defines qualifications, offices, election procedures, terms of office, duties, removal, vacancy appointments, and meetings for the group’s nine-person governing body, termed the “tribal council.” Article V outlines the governing powers of the “tribal council.” Article VI addresses the establishment of a five-member judiciary, called “Peacemakers,” their election, terms of office, and duties. Article VII establishes a “council of elders” for non-constitutional matters such as culture, tradition, and history. Article XIII provides for amending the group’s constitution. Thus, the governing document does describe governance procedures for the group.

Membership

Article II, Sections 1 through 4 of the BIN 2007 constitution defines the descent requirements for membership in the group, forbids membership in any other “tribe, band, or group of Indians” and permits enrollment ordinances passed by the group’s governing body to administrate membership and the enrollment process (BIN 1/20/2007). See criterion 83.7(e) for a detailed discussion of enrollment requirements, membership administration, and descent, and criterion 83.7(f) for concurrent membership in recognized tribes.

The BIN 2007 enrollment ordinance, dated May 12, 2007 and received by OFA on March 20, 2008, provides detailed definitions and procedures covering enrollment and membership as addressed in Article II of the group’s constitution (BIN 5/12/2007).

Conclusion

The BIN petitioner submitted a governing document that describes its governing procedures and its membership criteria. Therefore, the BIN petitioner meets the requirements of criterion 83.7(d).
Criterion 83.7(e)

83.7(e) The petitioner’s membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity

83.7(e)(2) The petitioner must provide an official membership list, separately certified by the group’s governing body, of all known current members of the group.

Introduction

The Brothertown Indian Nation (BIN) petitioner claims descent from the historical Brothertown Indian tribe of Wisconsin. For purposes of this evaluation under the criteria, this finding considers the Indian population enumerated on the list of “Brothertown Allottees of Wisconsin Lands in 1839” (1839 Allotment List) as the membership of the historical Brothertown Indian tribe of Wisconsin (Anthony et al. 10/-/1839, List). As discussed previously in the Overview of the Petitioner section of this PF, this historical tribe evolved from the Brothertown Indian tribe of New York State as a large portion of the tribe that moved from New York to Wisconsin. The BIN petitioner did not submit a narrative or analysis for criterion 83.7(e) describing or explaining its members’ ancestry claims, or their connection to the historical Brothertown Indian tribe of Wisconsin or New York. This connection was implied from the claim of descent from the individuals on historical lists shown on the petitioner’s 2008 membership list, and from information in the petitioner’s enrollment files and genealogical database.

Based on the criteria for membership contained in the BIN petitioner’s governing document, the 3,137 current members of the BIN petitioner claim direct descent from the historical individuals on at least one of three historical lists: (a) the 1839 Allotment List, (b) the “Roll of Brothertown Indians” (1901 Miller Roll), or (c) the “Roll of Brotherton Indians of Wisconsin as of September 27, 1967” (1967 Claims Roll) issued by the U.S. Department of the Interior (BIN 1/20/2007; Anthony et al. 10/-/1839, List; BIA 12/31/1901; BIA 12/23/1969). The petitioner’s members are also required to descend from one of the families mentioned in the appendix of Samson Occom and the Christian Indians of New England by W. DeLoss Love, but this document deals only with the Brothertown Indian tribe of New York, not Wisconsin (Love 1899). Although the Brothertown Indian tribe of Wisconsin evolved out of the Brothertown Indian tribe of New York and some of the individuals mentioned in the book are identified as those who moved to Wisconsin, this document does not identify the membership of the Wisconsin Brothertown Indian tribe.
The 1839 Allotment List is considered by the Department to be a membership list of the historical Brothertown Indian tribe of Wisconsin because it identifies individuals who received land allotments as members of the Wisconsin Brothertown Indian tribe. However, although the 1901 Miller Roll was based initially on a list of 209 individuals on the “Roll of the recognized members of the Brothertown tribe” (1901 Business Committee Roll) submitted to the Department by the Wisconsin Brothertown Business Committee in 1901, the final version of the 1901 Miller Roll listed a total of 570 individuals, of whom were not recognized as members by the Brothertown Business Committee (BIA 12/31/1901, Brothertown Business Committee 11/30/1901). This list is a descendancy roll and not a listing of members of an Indian entity. The 1967 Claims Roll identifies individuals whom the Federal Government considered to be descendants of the Brothertown Indian tribe of New York through individuals listed on the 1839 Allotment List. The 1967 Claims Roll lists 702 individuals, all except 14 of whom claim descent from a named 1839 or 1901 ancestor, but this list is a descendancy roll and not a listing of members of an Indian entity (BIA 12/23/1969).

The BIN petitioner submitted a Family Tree Maker™ (FTM) genealogical database, lineage charts, copies of 1901 claims applications, and copies of enrollment files for current members, in addition to other historical documents to demonstrate descent for its current members (BIN 2008, FTM).

OFA analysis of the BIN petitioner’s genealogical evidence, including 3,230 enrollment files (for current members as well as non-members) and evidence that OFA developed, demonstrates that 1,593 of the petitioner’s current 3,137 members (51 percent) have documented their descent, generation by generation, from a member of the historical Brothertown Indian tribe of Wisconsin as identified on the 1839 Allotment List.

The current record also illustrates that an additional 1,309 BIN members (42 percent) descend from individuals who were part of the historical Brothertown Indian tribe of Wisconsin but their descent is not documented. Seven percent (235 of 3,137) of the current BIN members have neither illustrated nor documented descent from an ancestor who was identified as a member or descendants of the 1839 Brothertown Indian tribe in Wisconsin. Appendix M in this PF lists the 1839 Brothertown Indian ancestors claimed by BIN members and the number of descendants from each in the current BIN membership.

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123 A supplemental list submitted by Guion Miller to the Secretary of the Interior, entitled “Roll of Brothertown claimants found to be entitled under the decree, whose names are to be added to the roll heretofore made by the Secretary of the Interior,” (1906 Final Claims Roll) under the “Final Decree” dated May 7, 1906, included the names of an additional 255 “Brothertown descendants,” although the list does not specify whether these individuals are descendants of the Wisconsin Brothertown Indian tribe or the New York Brothertown Indian tribe (G. Miller 1/8/1906).

124 The additional 361 individuals accepted by Miller includes descendants of at least two claimed ancestors of the petitioner who were identified in testimony by Brothertown descendants as members of the historical Brothertown Indian tribe of New York but who were not allotted in 1839 and whose descendants were not identified as members of the tribe on the 1901 Brothertown Committee Roll submitted to Guion Miller. See discussion of petitioner’s claimed ancestors under this criterion.
The petitioner should submit documentation for the FD demonstrating descent for its members who have not demonstrated their descent from the historical Brothertown Indians of Wisconsin as identified on the 1839 Allotment List. These members would include the 7 percent (235 members) who have not illustrated an 1839 Wisconsin Brothertown ancestor and the 42 percent (1,309 members) who have illustrated an 1839 Wisconsin Brothertown ancestor but have not demonstrated generation-by-generation descent.

Membership Lists

Current Membership List for BIN

The current membership list for the BIN petitioner, entitled “Brothertown Indian Nation, Roster of all members with addresses & descendants sorted by Roll #,” was separately certified by the petitioner’s governing body on June 21, 2008, and received by the Department on June 24, 2008 (BIN 6/21/2008). After OFA corrected the list for duplicate entries, deceased members, and adopted members, the list contained 3,137 entries, including both adults and minor children. All entries have a unique membership identification number. The list contains columns for member names, maiden names, birthdates, and residential addresses as required by criterion 83.7(e) as well as other information, such as 1839 and 1901 ancestors. However, 794 individuals (25 percent) are missing residential addresses (669 with no addresses and 125 with post office or rural route addresses) and 238 female members (about 8 percent of the total membership) are missing their maiden name or have the wrong maiden name on the membership list. A few members have missing or erroneous birthdates.

The current membership list provided sufficient evidence to evaluate the petitioner under criterion 83.7(e). However, the deficiencies noted above should be addressed. The comment period provides the BIN petitioner an opportunity to provide an updated membership list containing the names of all living members (including minors) and all information required in criterion 83.7(e), such as any missing residential addresses, missing or erroneous maiden names, or missing or erroneous birthdates.

Previous Membership Lists for BIN

In the BIN petitioner’s 1995 petitioner narrative, the group stated that its membership totaled 858 individuals. However, the petitioner submitted no membership list in 1995 and no explanation of how the petitioner knew how many members it had without a membership list (BIN 1996, 109).

The BIN petitioner submitted three previous membership lists. The earliest membership list submitted by the petitioner is dated January 19, 1996, and contains 2,269 members (BIN 1/19/1996). A second membership list submitted by the petitioner, dated December 19, 2005, lists 2,845 members, an increase of 25 percent over the previous list (BIN
12/19/2005). In 2008, the petitioner submitted a membership list dated December 31, 2007, listing 3,111 members, an increase of 9 percent (BIN 12/31/2007). The current (2008) membership list, containing 3,137 members, shows an increase of about 1 percent from December to June 2008 (BIN 6/21/2008). See Appendix L in this PF for details on individual membership lists and this criterion for an analysis of membership changes.

In its response to the Department’s January 8, 2009, request for additional membership information, the BIN petitioner submitted a brief narrative describing the initiation of the group’s membership database and subsequent updates (see analysis below), but the petitioner did not specifically describe the circumstances surrounding the preparation of the four membership lists submitted for the PF as directed by criterion 83.7(e)(2)).

Membership

Membership Eligibility Criteria

As defined in the BIN petitioner’s current governing document, dated January 20, 2007, membership is available to any person

    (a) Descended from one of the historic Brothertown families as defined in the appendix of W. DeLoss Love’s book *Samson Occom and the Christian Indians of New England* [125] and,

    (b) An ancestor listed on one of the following rolls:

        Certified Rolls of 1839 and addenda;[126] or
        Certified Rolls of 1901 and addenda;[127] or
        Certified Rolls of 1967.[128] (BIN 1/20/2007)

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125 Although this book was written and published after the death of Samson Occom and long after the establishment of the Indian community at Brothertown, New York, it is based on, and reliably cites, primary sources such as manuscripts, records, diaries, and letters (Love 1899). See *Genealogical Evidence: Records Reviewed* under this criterion for more a detailed discussion of this publication.

126 The Department interpreted this title to refer to the 1839 Allotment List and the associated 1845 Amendatory Reports (Anthony et al. 10/-/1839, List). See *Genealogical Evidence: Records Reviewed* under this criterion for more a detailed discussion of these documents.

127 The Department interpreted this title to refer to the 1901 Miller Roll and the 1906 Final Claims Roll (BIA 12/31/1901, G. Miller 1/8/1906). See *Genealogical Evidence: Records Reviewed* under this criterion for more a detailed discussion of these documents.

128 The Department interpreted this title to refer to the claims roll entitled “Roll of Brothertown Indians of Wisconsin as of September 27, 1967” (1967 Claims Roll) containing 702 names (BIA 12/23/1969). See *Genealogical Evidence: Records Reviewed* under this criterion for more a detailed discussion of this document.
Membership Application Process

Article II, Sections 3 and 4 of the group’s 2007 governing document provides that enrollment ordinances passed by the governing body and enforced by the enrollment committee will govern the acquisition and forfeiture of membership.

The BIN petitioner’s 2007 enrollment ordinance provides detailed definitions and procedures covering Article II of the group’s constitution (BIN 5/12/2007). This enrollment ordinance expands the enrollment eligibility criteria to specifically include all persons who have at least one natural parent who is a member of the group and addresses membership eligibility for children of members who are adopted by non-members. There is no criterion excluding members who marry outside the group. The enrollment ordinance also describes detailed procedures for enrollment application, documentation, review, and certification. It addresses the qualifications, terms, and responsibilities of the group’s enrollment committee, provides for the certification of the group’s membership roll, and provides criteria and procedures for withdrawal and restoration of membership. It also itemizes the restrictions and penalties incurred by dual enrollment. Procedures for appealing decisions of the enrollment committee and the governing body are also included in the BIN 2007 enrollment ordinance.

The BIN petitioner submitted blank sample application forms, including

- A one-page questionnaire for applicants requesting personal information on the applicant and the applicant’s spouse (BIN 1982), and
- A three-page “application for enrollment,” which requires the applicant’s signature, address, and telephone number, and the names of the applicant’s parents, grandparents, and great-grandparents (BIN 1981).

OFA examined the documentation provided in 3,230 BIN enrollment files provided by the petitioner and entered into the Department’s annotated genealogical database information from the files that verified generation-by-generation descent for members in the petitioner’s genealogical database (BIN 2005, Enrollment Files). The petitioner did not submit enrollment files for all current members, but did submit enrollment files for some individuals who are not members, often parents or children of current members. As a result, there are more enrollment files (3,230 total) than current members (3,137). The ancestry of some of the current members without enrollment files in the record are documented in the enrollment files of their children. The enrollment files provided highly useful information for verification of current members’ names, birthdates, and claimed ancestry as shown on the petitioner’s current membership list.

Almost all enrollment files contained copies of the following seven items, which provide some information on the membership application process:
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- A cover sheet giving the member’s name, membership number, birth date, 1901 Roll ancestor and 1839 Roll ancestor;
- An enrollment application with full name and address, names of spouse, children, and parents, additional personal information, an assertion of membership in the group, and the signature of the applicant (3 pages);
- A lineage form naming the member’s parents, grandparents, and great-grandparents, and identifying the member’s 1901 and 1839 ancestors (3 pages);
- A computer-generated ancestry chart, showing at least 3 generations ancestral to the applicant (ancestors who were members of a historical Indian tribe were not specified) (1-4 pages);
- A certified copy of the member’s original birth certificate (a few files contained only certified abstract of the birth or baptismal record) (1 page);
- Copies of birth certificates, marriage certificates, and death certificates of parents and ancestors;
- A copy of the 1901 claims application of the member’s claimed ancestor.

Documentation of Descent

The BIN petitioner specifies in its enrollment ordinance that the documents required of group members to substantiate descent from the historical Indian tribe are birth certificates, death certificates, marriage licenses, baptismal records, copies of probate findings, or affidavits. The BIN petitioner submitted documents adequate to demonstrate how its membership meets the group’s own membership criteria in most of the 3,230 member enrollment files provided. Most of these files contained primary records as well as lineage and ancestry charts describing generation-by-generation descent for every generation between the member and the 1901 Claims Roll ancestor. However, some of the primary records do not adequately verify parentage (see discussion under Summary below).

Termination, Severance, or Restoration of Membership

The BIN petitioner’s 2007 enrollment ordinance specifies procedures for terminating or severing membership and for restoration of membership (BIN 5/12/2007).

Analysis of Current Membership List

Of the 3,137 individuals named on the BIN petitioner’s current (June 2008) membership list and in its electronic database, 54 members (about 2 percent) were not connected to ancestors earlier than parents or grandparents (BIN 6/21/2008, BIN 2008, FTM). In response to a request by Department for additional information for these individuals, the BIN petitioner provided enrollment files containing information on the claimed ancestry of these individuals. The petitioner also provided requested information for 9 members believed to be deceased, 12 members with surname or parentage discrepancies, and 57 members with member number discrepancies.
In the letter accompanying this information requested by the Department, the petitioner claims that “[t]he current BIN Roll was a continuation of the 1967 roll created by the Bureau of Indian Affairs . . . to distribute funds awarded them” (BIN 3/2/2009). The petitioner states that, using the 1967 Claims Roll as a base, “BIN’s genealogist in the 1980’s continued the roll, correcting numerous inaccuracies concerning . . . ancestry, removing many non-Brothertown Indians” (BIN 3/02/2009). The petitioner did not submit information about which individuals were “removed” from the 1967 Claims Roll or why they were considered to be “non-Brothertown.” The 1967 Claims Roll includes individuals who descend from ancestors listed on the 1839 Allotment List, but it does not identify members of a contemporary Indian entity. Thus, the petitioner’s current membership list is derived from a Federal document identifying descendants of individuals who were members of the Brothertown Indian Tribe of Wisconsin in 1839, but it does not derive from members of an Indian entity existing in 1967.

The number of members in the BIN petitioner has reflected steady growth since the petitioner’s 1996 membership list (see Appendix L in this PF). The later increases in membership may reflect the natural growth of families, but analysis of the current membership list indicates that a significant number of members’ minor children may not be currently enrolled (see discussion on potential growth below). The current membership list reveals only 41 members born during the 5 years preceding the creation of the 2008 membership list. For a membership of 3,137 members, this is an unusually small birth rate statistically (about 1 percent). Additionally, the membership includes descendants of new family lines which did not appear on previous lists. The BIN petitioner is encouraged to submit a statement for the FD addressing the variation in the composition of the group through time; that is, the notation of births, deaths, new enrollments, and disenrollments, or changes in enrollment policy accounting for the increase or decrease in members through time.

The analysis for this PF finds potential for significant increase in membership. The BIN petitioner’s genealogical database includes many descendants who are siblings, children, or grandchildren of current members but who are not found on the petitioner’s current membership list. It is not clear whether these are individuals who are in the “process of enrolling,” have declined membership, or are members of another group. The BIN petitioner’s current governing document specifies that all members must descend from a family identified in the appendix of Love’s book about Samuel Occom and from the 1839 Allotment List or the 1901 Miller Roll or the 1967 Claims Roll (Love 1899; Anthony et al. 10/-/1839, List; BIA 12/31/1901; BIA 12/23/1969). Because many of the families in the appendix of Love’s 1899 book and many of the individuals on the required lists do not have descendants in the BIN petitioner, there is a possibility of a very large number of persons eligible to join the petitioner who are unrelated to current members and who have never been identified as members of the petitioner or the historical Brothertown Indian tribe of Wisconsin. There are 570 individuals listed on the 1901 Miller Roll and 255 individuals on the 1906 Final Claims Roll, a total of 825 individuals claiming Wisconsin Brothertown descent, at least 600 of whom do not have any descendants enrolled in the BIN petitioner (BIA 12/31/1901, G. Miller 1/8/1906). Also, 173 individuals (25 percent) of the 702 New York Brothertown Indian descendants listed on
the 1967 “Roll of Brotherton Indians of Wisconsin as of September 27, 1967”¹²⁹ are not listed in the petitioner’s genealogical database and may be eligible for membership in the petitioner (BIA 12/23/1969). The BIN petitioner has not made any statement regarding the admission of new members, nor expressed an intent to expand its membership to include the descendants of these individuals. However, the petitioner’s membership criteria would allow the group to include any individuals who can demonstrate descent from an ancestor on the 1839 or 1901 or 1967 lists.

**Petitioner’s Claims of Descent**

The BIN petitioner claims the “historic Brothertown [New York] families” as their primary ancestors (see membership requirements under criterion 83.7(d)) based on the petitioner’s 2007 governing document (BIN 1/20/2007). The petitioner identifies these families as those named in the appendix of W. DeLoss Love’s book *Samson Occom and the Christian Indians of New England* (Love 1899). There are 55 surname-specific families of the historical Brothertown tribe of New York profiled in the genealogical appendix of Love’s 1899 book, many of whom intermarried (Love 1899).

The BIN petitioner did not provide a specific list of the families profiled in Love’s 1899 book, from whom BIN members are required to demonstrate descent, or any lists of current members descending from each family. The petitioner submitted genealogical reports (FTM descendant reports) for 16 ancestors or ancestral couples representing 15 different surnames. All but one of the individuals representing these 15 surnames are identified in the appendix of Love’s 1899 book and the petitioner’s genealogical database links current members to 14 of the 15 surname-specific ancestors or ancestral couples (BIN 2005, Genealogical Reports). The petitioner did not include any explanation of why the progenitors shown on these reports should be regarded as Brothertown Indian ancestors or how the progenitors related to individuals demonstrated as members of the historical Brothertown Indian tribe of Wisconsin on the 1839 Allotment List.

The petitioner did not require its members to document descent from these claimed New York Brothertown Indian ancestors profiled in Love’s 1899 book prior to the group’s 2007 governing document (BIN 1/20/2007; BIN 1988; BIN 1996; BIN 9/14/2002). Nor were members specifically allowed the option of claiming descent from a person on the 1967 Claims Roll before the 2007 governing document (BIA 12/23/1969). Previous governing documents only required members to demonstrate descent from the 1839 Allotment List and addenda, or from the 1901 Miller Roll and associated addenda (Anthony et al. 10/-/1839, List; BIA 12/31/1901; BIN 1988; BIN 1996; BIN 9/14/2002). However, these previous governing documents did allow members to use “any other substantiating evidence as needed to establish their descendancy from a Brothertown Indian ancestor on the above [1839 or 1901] certified rolls” (BIN 1/20/2007).

The petitioner’s current governing document treats the 1839 Allotment List, the 1901 Miller Roll, and the 1967 Claims Roll as lists of ancestors belonging to a Brothertown

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¹²⁹ The 1967 Claims Roll was dated September 29, 1967, but was not published until December 23, 1969.
Indian entity (BIN 1/20/2007; Anthony et al. 10/1839; List; BIA 12/31/1901; BIA 12/23/1969). The 1839 Allotment List does present a list of members of the historical Brothertown Indian tribe of Wisconsin compiled by the tribe in compliance with the Congressional Act of March 3, 1839. However, the 1901 Miller Roll and the 1967 Claims Roll identify only Indian descendants and do not identify members of the historical Wisconsin Brothertown Indian tribe or any Wisconsin Brothertown Indian entity that may have existed in 1901 or 1967. The 1901 Miller Roll did rely upon a “roll” compiled by the Brothertown Business Committee (1901 Business Committee Roll) that identified members of the Brothertown Indian descendants in Wisconsin and Minnesota in 1901 (BIA 12/31/1901, Brothertown Business Committee 11/30/1901). The Committee did not state the criteria used for including the individuals listed on the 1901 Business Committee Roll. The petitioner provided no annotation for any of these lists to indicate which individuals were claimed as Wisconsin Brothertown Indian ancestors of the petitioner’s members.

The petitioner’s 2008 membership list identifies a claimed Indian ancestor on the 1839 Allotment List and on the 1901 Miller Roll for almost all members. A few members have no ancestors listed, some have only an 1839 ancestor, and some have only a 1901 ancestor. Enrollment files submitted for the petitioner’s current members include an ancestry chart showing the member’s claimed lineage and a 1901 claims application for the member’s claimed 1901 Miller Roll ancestor.

The BIN petitioner submitted genealogical information in a FTM genealogical database which included numerous ancestors without specifically identifying them as Indians, or descended from or affiliated with the historical Brothertown Indian tribe of Wisconsin. The BIN petitioner did not submit any analysis, separate from the appearance of those historical individuals in the petitioner’s genealogical database or on the petitioner’s current membership list, describing or explaining these ancestors’ connection to the historical Brothertown Indians of Wisconsin or New York. The BIN petitioner’s 2008 membership list, genealogical database, and charts generated with the database provide some indication of whom the petitioner’s members claim as Brothertown Indian ancestors (BIN 6/21/2008; BIN 2008, FTM; BIN 2005, Genealogical Reports). The BIN genealogical database contains references to primary records and secondary sources which provide historical information on members’ ancestors but the BIN petitioner submitted copies of only a few of the original documents. The comment period provides the BIN petitioner the opportunity to document its members’ ancestors and clearly explain their connection to the historical Brothertown Indian tribe of Wisconsin, and to submit copies of records cited in the groups’ petition materials.

Genealogical Evidence: Records Reviewed

The regulations describe types of evidence that are acceptable to the Secretary under §83.7(e)(1)(i-v). However, the acceptable evidence is not limited to the categories listed in the regulations. The OFA researchers reviewed numerous historical documents relating to the Indians residing at Brothertown, Calumet County, Wisconsin, some of
which the BIN petitioner did not submit but which OFA located. These records included rolls, testimony, and reports for the Court of Claims in 1901, 1903, and 1906 (BIA 12/31/1901, G. Miller 1903, G. Miller 1/8/1906); Federal and State documents such as the 1839 Brothertown Allotment List and 1845 amendatory report (see Appendix B in this PF; Anthony et al. 10/-/1839, List); the 1901 Miller Roll and Brothertown Committee Roll (BIA 12/31/1901; Brothertown Business Committee 11/30/1901); the 1840 to 1870 Federal censuses of Calumet County, Wisconsin (see Appendices C through F; U.S. Census 1840, 1850, 1860, 1870); and the Wisconsin State censuses of 1875 and 1905 (Wisconsin 1875, 1905). OFA researchers also utilized online electronic databases, such as Ancestry.com (U.S. census indices and images), to verify information or locate additional records.

Individuals found in these records and documented as members of the Brothertown Indian tribe of Wisconsin or descendants of the Brothertown Indian tribe of Wisconsin, who are claimed or demonstrated ancestors of the petitioner’s members, are listed in Appendices M and N, along with their birth and death dates, spouses’ names, and roll or list or application numbers. The following section outlines the types of records used to verify and evaluate the BIN petitioner’s claims.

(1) Rolls prepared by the Secretary on a descendancy basis

The 1839 Allotment List for the Brothertown Indians of Wisconsin was prepared under the provisions of the Act of 1839 (Anthony et al. 10/-/1839, List). That Act required tribal leaders to submit a list of all tribal members eligible to be allotted reservation land. Therefore, in contrast to later descendancy rolls for the purpose of claims that the Department later prepared for Brothertown descendants, the 1839 Allotment List is considered to be not only a descendancy roll but also a tribal membership list prepared for the purpose of land allotment. Documents associated with the 1839 Allotment List include an allotment report, a list of individuals, and a map of allotted lands. The 387 individuals named on the 1839 Allotment List and on an accompanying 1840 map and 1845 amendatory reports, identify the members of the historical Brothertown Indian tribe of Wisconsin who were allotted land based on their membership in the tribe (Anthony et al. 10/-/1839, List).130 These documents give only the names of individuals, their number on the list, and the lots that they were assigned. Birth dates, ages, and family relationships are not included. Considered together, these documents provide a membership list of the historical Brothertown Indian tribe of Wisconsin in 1839.

In 1901, Guion Miller, Special Agent of the Office of Indian Affairs, was charged with compiling a “[r]oll of the individual beneficiaries of the Brothertown Tribe of New York Indians living December 31, 1901 and entitled to participate in the fund arising from the judgment of the Court of Claims in favor of the New York Indians, rendered November 14, 1898, for which appropriation was made by Act of Congress of February 9, 1900” (BIA 12/31/1901). The 1901 Miller Roll is a roll of individuals descending from members of the Brothertown Indian tribe of Wisconsin, and thus from

130 See additional discussion of 1839 allotees and the 1839 Allotment List under criterion 83.7(b) and this criterion as well as information in Appendices B and M in this PF.
the Brothertown Indian tribe of New York from which it evolved, who were eligible to receive claims distributions from the Federal Government. Guion Miller, as Special Agent of the Office of Indian Affairs, prepared this roll for use by the Court of Claims. He requested and received the “Roll of the recognized Members of the Brothertown Tribe” provided by the Brothertown Business Committee (1901 Business Committee Roll) which Miller incorporated into his 1901 list of Brothertown descendants (1901 Miller Roll) (Brothertown Business Committee 11/30/1901, BIA 12/31/1901). Miller collected and evaluated applications, collected testimony about applicants’ ancestry and membership in the tribe, and prepared the roll which was approved in 1901. The 1901 Miller Roll lists 570 descendants of the Brothertown Indian tribe of NY, including 209 individuals who were named as members of the Brothertown Indian tribe of Wisconsin by the Brothertown Business Committee on the 1901 Business Committee Roll (BIA 12/31/1901, Brothertown Business Committee 11/30/1901). Miller listed an additional 255 descendants of the Brothertown Indian tribe of NY in a final decree in 1906 (1906 Final Claims Roll), bringing the Brothertown descendants entitled to payments awarded under *The New York Indians v. The United States* to a total of 825 (G. Miller 1/8/1906, U.S. Court of Claims 6/13/1906). The 1901 Miller Roll and supplemental lists included 616 individuals (825 minus 209) who were not identified as members of the Wisconsin Brothertown Indian tribe by the Brothertown Business Committee. Miller included these additional 616 individuals because, according to U. S. law, they were descendants of the New York Brothertown Indians living in Wisconsin and nearby areas. These 616 individuals were not recognized by the Brothertown Business Committee as members of the Wisconsin Brothertown “tribe” because their mothers or grandmothers married outside of the tribe or because their ancestors were not allotted with the Brothertown Indian tribe in 1839. Therefore, the 1901 Miller list is not a membership roll for the Brothertown Indian tribe of Wisconsin.  

Overall, the 1901 Miller Roll, the 1906 Final Claims Roll and the 1901 claims applications are useful, contemporary sources for identifying living applicants, for directing the acquisition of primary documentation, and for baseline information on an applicant’s offspring (BIA 12/31/1901, G. Miller 1/8/1906, Claims Applications 1901). While the documents associated with the 1901 Miller Roll are “acceptable” forms of evidence, other forms of contemporary evidence, such as birth records and censuses, provide conflicting or supporting information. OFA used these sources to corroborate or refute ancestry claims made in the 1901 applications and the petitioner’s genealogical database.

The BIN petitioner submitted copies of 629 of the claims applications prepared for the 1901 Miller Roll, but some of these claims applications submitted by the petitioner were for descendants of tribes other than Brothertown, such as Oneida, Stockbridge, Montauk, and Munsee (Claims Applications 1901, BIA 12/31/1901). Additional 1901 claims applications were included in the 3,230 enrollment files submitted by the petitioner (BIN 2005, Enrollment Files), although many of these were the same applications as those submitted separately. The petitioner’s submission of these applications was extensive.

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131 See also Appendices I and N in this PF.
and the Department did not need to obtain additional applications in order to evaluate the claimed ancestry of the petitioner’s members.

The Department obtained additional Federal documents containing testimony collected by Guion Miller to substantiate or augment information on the 1901 claims applications for the 1906 Final Claims Roll, including portions of two reports on admitted Brothertown claims and a portion of miscellaneous testimony (G. Miller 1/8/1906, G. Miller 1903). The BIN petitioner also submitted excerpts from a report on admitted claims dated approximately 1904 as well as a 65-page index to names of New York Indian claimants showing accepted and rejected claims, family relationships, and tribal affiliations (G. Miller 1904, BIA n.d.). The latter document listed individuals who descended from a large number of tribes, not just Brothertown Indians of New York.

The petitioner submitted a copy of the 1967 Claims Roll, prepared as a result of the Act of September 27, 1967 (81 Stat. 229) which directed the U.S. Indian Claims Commission (Docket Number 75) to prepare three “rolls of all persons born on or prior to and living on the date of this Act” identifying (a) the members of the Oneida Tribe of Indians of Wisconsin, (b) the members of the Stockbridge-Munsee Indian Community of Wisconsin, and (c) “Brotherton Indians of Wisconsin of at least one-fourth degree Emigrant New York Indian blood and not members of either of the organized groups mentioned in (a) or (b).” The individuals on the “Roll of Brotherton Indians of Wisconsin as of September 27, 1967” (1967 Claims Roll) were identified as individual descendants of the Brothertown Indians of Wisconsin, but were not identified as members of an existing Indian entity (BIA 12/23/1969). Therefore, this list is not a membership roll for Brothertown Indians of Wisconsin.

The 1967 Claims Roll includes the name, address, sex, and date of birth, degree of “ENY,”132 blood, roll of ancestor (1839 or 1901), “No.” and name of ancestor, 133 and the relationship of enrollee to ancestor for each claimant (BIA 12/23/1969). The roll lists 702 individuals and provides the claimed 1839 or 1901 ancestor of all but 14 of these claimants. Ancestry discrepancies on the 1967 Claims Roll identified by OFA researchers include (a) 97 individuals claiming descent from a collateral relative and not a direct ancestor, (b) 72 individuals claiming descent from an uncertain or inaccurate ancestor, and (c) 14 individuals with no listed ancestor.

(2) State, Federal or other official records

Eight decennial U.S. censuses taken in 1850, 1860, 1870, 1880, 1900, 1910, 1920, and 1930 (U.S. Census 1800-1880, 1900-1930) provided information on persons residing in Wisconsin and Minnesota, and other areas where some of the petitioner’s ancestors lived. The BIN petitioner submitted abstracts and copies of portions of some census records for

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132 Emigrant New York Indian

133 The numbers provided for 1839 ancestors on the 1967 Claims Roll do not correspond to the Case numbers for 1839 Brothertown allottees but the numbers provided for the 1901 ancestors do correspond to those on the 1901 Miller Roll (BIA 12/23/1969; Anthony et al. 10/-/1839, List; BIA 12/31/1901).
selected towns and counties as well as copies of census indexes compiled from Family Quest (Heritage Quest™) and Ancestry.com websites. The BIN petitioner provided only limited annotations identifying selected members of the BIN or ancestors of the petitioner’s members and then only in the genealogical database, not on the census copies. The OFA researchers examined the submitted documents, as well as full copies of these censuses available at the National Archives and Records Administration (NARA) and on websites such as Ancestry.com. However, due to the large number of members in the BIN petitioner, the OFA researchers were unable to reach a reliable determination of the number of individuals claimed by the petitioner as members or ancestors of members who were enumerated in each of these records (see also discussion of censuses under criterion 83.7(b)).

The 1840 and later censuses enumerated some of the petitioner’s claimed ancestors, in Calumet County and elsewhere in Wisconsin and in Minnesota, some of whom were recorded as “Indian.” Census records in 1850 and later provided genealogical information, such as age, year of birth, place of birth, relationships, and parents’ birthplaces. This information was useful in verifying the descent information for the petitioner’s members and their ancestors, both Indian and non-Indian.

The BIN petitioner submitted photocopies of several State and County marriage and death records for individuals the BIN petitioner claims are members or ancestors of members. These included 6 marriage records for unions recorded between 1788 and 1968, and 9 death records for individuals who died between 1909 and 2001.

The petitioner submitted and OFA researchers obtained some historical Wisconsin records such as the State censuses of 1875 and 1905, State birth and death extracts (using Ancestry.com), and Calumet County land records dealing with the lands allotted to members of the historical Brothertown Indian tribe living at Brothertown, Wisconsin (Wisconsin 1875, 1905; Anthony et al. 10/-/1839, List). These documents assisted OFA in the verification of other records and provided information helpful in building a database of historical Brothertown Indian individuals (see Appendix M in this PF) and in identifying the BIN petitioner’s claimed ancestors living at Brothertown, Wisconsin, from 1839 to the present.

(3) Church, school, and other similar enrollment records

A few baptismal certificates were included in the petitioner’s enrollment files in lieu of birth records (BIN 2005, Enrollment Files). No other church record or school records were submitted by the petitioner or located by OFA researchers that provided descent documentation.
(4) **Other records or evidence**

(a) County, City and Family Histories and Commentaries, and Personal Records

The BIN petitioner derived much of the information used in its historical narrative from academic publications on the history of the historical Brothertown Indians of New York (see also discussion under criteria 83.7(a) and 83.7(b)). Only one of these publications, the book by W. DeLoss Love, *Samson Occom and the Christian Indians of New England*, provided names of and relationships between individuals living in New York or Wisconsin, who were identified as Indians of the historical Brothertown Indian tribe of Wisconsin (Love 1899). Although the genealogical information supplied by the appendix in this book does not cite specific sources for the marriage, birth, and death information contained therein, the author’s original preface refers to manuscripts, diaries, and official records as original sources. However, the families and descendants named in the book do not fully account for the individuals listed on the 1839 Allotment List and the genealogy includes many individuals who did not move to Wisconsin and thus are not part of the historical Brothertown Indian tribe of Wisconsin.

The BIN petitioner submitted a number of articles and extracts from local histories, professional journals, and personal records, but these documents contained very little genealogical information regarding family relationships or information useful for verifying descent from the historical Brothertown Indians living in Wisconsin. Several academic studies in the current record describe the individuals and groups in the vicinity of or associated with Brothertown, Wisconsin.

(b) Oral Histories

The BIN petitioner submitted 11 interviews with members born before 1935. In 2008, OFA conducted 24 interviews with 30 people, 3 of whom were born in Calumet County, Wisconsin, before 1935. All informants claimed descent from the historical Brothertown Indian tribe of Wisconsin. These interview transcripts included a discussion of individual ancestors, relatives and kinship relationships, and memories of neighbors and schoolmates. These records provided some limited insight into the petitioner’s claimed relationships and activities (see discussion under criterion 83.7(b)), and contained some genealogical information on parents, grandparents, siblings, and cousins. However, what little information was obtained about ancestors was primarily anecdotal “family tradition.” If information on the relatives discussed in the oral histories is not provided elsewhere in the record, the petitioner needs to provide photocopies of birth, marriage, and death records, or other reliable evidence to substantiate claims made in the oral histories.

(c) Personal Information

The BIN petitioner submitted 15 descendant charts (BIN 2005, Genealogical Reports), created with the petitioner’s FTM genealogical database, for historical individuals or couples who are identified as Brothertown Indians of New York (ancestors to
Brothertown Indians of Wisconsin (Petitioner #67) by Love in 1899. The BIN did not label current members of the petitioner, nor individuals who were members of the historical Brothertown Indian tribe of Wisconsin on these charts.

The BIN petitioner submitted copies of 3,230 enrollment files for members and non-members containing birth, baptismal, marriage, and death records as well as individual ancestry charts (BIN 2005, Enrollment Files). Enrollment files for some members were missing but often information for those missing files was included in the files for the member’s offspring. Member information, personal data, and kinship relationships are compiled in the petitioner’s FTM genealogical database (BIN 2008, FTM). OFA researchers confirmed some of the dates and relationships for some individuals included on the ancestry charts and in the genealogical database through examination of census records and other sources.

(d) Other Sources

Numerous newspaper articles dating from 1839 to 2006 are found in the record, including 22 obituaries, which provided some confirmation of genealogical information. However, the reliability of newspaper accounts varies according to the type of event, the source of information, and the perspective of the writer. For example, contemporary notices of marriages, births, or deaths are generally more reliable than reminiscences of genealogical connections to historical figures. The obituaries provided some verification of genealogical information on the individuals discussed, such as birth or death dates, and names of spouses, children, siblings, and parents.

Analysis of Descent from a Historical Indian Tribe

Based on information in the current record, 1,593 of the petitioner’s current 3,137 members (51 percent) have documented their descent, generation by generation, from a member of the historical Brothertown Indian tribe of Wisconsin as identified on the 1839 Allotment List (Anthony et al. 10/1839, List).

The current record also illustrates that an additional 1,309 BIN members (42 percent) descend from individuals who were part of the historical Brothertown Indian tribe of Wisconsin but their descent is not documented. Seven percent of the petitioner’s members (235 of 3,137) do not link to an ancestor who is identified as a member of the historical Brothertown Indian tribe of Wisconsin, based on lineage information provided by the petitioner or information obtained by the Department.

Analysis of Claimed Ancestors

The BIN petitioner, claiming the historical Brothertown Indian tribe of Wisconsin as its historical tribe, defined four documents in its 2008 constitution as those naming its historical Indian ancestors:
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- the 1839 Allotment List (Anthony et al. 10/1839, List) and addenda,
- the 1901 Miller Roll (BIA 12/31/1901) and addenda, and
- the 1967 Claims Roll (BIA 12/23/1969).\(^{134}\)

OFA reviewed these documents and determined that only the 1839 Allotment List is a list naming members of the historical Brothertown Indian tribe of Wisconsin (Anthony et al. 10/1839, List). This document names members of the Brothertown Indians of Wisconsin who were eligible and received allotments of land in 1839 from the former Brothertown reservation in Calumet County, Wisconsin. It is the best evidence of the membership of the historical Brothertown Indian tribe of Wisconsin since it was created by the tribe in compliance with the Act of 1839. This list, along with an 1840 map and the 1845 Amendatory Reports, identifies 387 individual Wisconsin Brothertown tribal members. Appendix B in this PF contains the name of the 1839 allottees listed on the 1839 Allotment List and in the associated 1845 amendatory report. Appendix M in this PF lists the names of the petitioner’s claimed ancestors appearing on the 1839 Allotment List and the number of current BIN members descending from them.

Some 1839 allottees never moved to Wisconsin, nor did their descendants leave New York. Two of these allottees, Asa Dick and Rhodolphus/Rodolphus Paul, who both were born and died in New York, have descendants (Dick 128, Paul 23) in the BIN petitioner. None of the known descendants of Rhodolphus/Rodolphus Paul ever resided in Wisconsin or outside of New York as far as the current record shows. Some allottees moved to Wisconsin to receive their land and then sold the land and moved back to New York.

Some individuals moved to Wisconsin too late to receive an allotment and were not listed on the 1839 documents, but were included on the 1901 Miller Roll as descendants of the Brothertown Indian tribe of New York based on testimony for 1901 applicants. One of these individuals, Thomas DeWayne Hammer (1814-1889), is an ancestor of 124 current BIN members. He moved from New York to Calumet County, Wisconsin, in about 1841. He did not receive an allotment and was not included on the 1839 Allotment List or named in the 1845 Amendatory Reports. However, 21 of his descendants are listed on the 1901 Miller Roll, although they were not included on the 1901 Business Committee Roll of recognized Wisconsin Brothertown tribal members.

Mary Elizabeth (Hammer) Modlin (1816-1872), the sister of Thomas DeWayne Hammer and ancestor of 137 current members of the BIN petitioner, arrived in Calumet County, Wisconsin, between late 1839 and the end of 1840. She brought with her an infant son, George Hammer (1839-1913), and gave birth to at least four of her next seven children in Calumet County between 1840 and 1859. Although Mary Elizabeth (Hammer) Modlin arrived almost immediately after the 1839 allotments, she herself was not included in the allotments because she had married “outside” the tribe and was no longer considered by

\(^{134}\) See description and discussion of these documents in sections on Membership and Genealogical Evidence under this criterion.
the tribe to be a tribal member. Other New York Brothertown women who, like Mary Elizabeth Hammer, had married “outside” the tribe, were likewise omitted from participation in the 1839 land allotments, even though they lived alongside the members of the Wisconsin Brothertown Indians and some of their children intermarried with Wisconsin Brothertown tribal members. Guion Miller later included descendants of these women and their children in the 1901 Miller Roll as Brothertown descendants, including one daughter and four grandchildren of Mary Elizabeth (Hammer) Modlin, but these women and their children were not included on the 1901 Business Committee Roll of recognized Wisconsin Brothertown tribal members.

Although the 1839 Allotment List names allottees together in family groups, it is not a simple document to interpret. There are numerous individuals on the 1839 Allotment List with the same name, or similar names, making it difficult to determine whether particular ancestors of the BIN petitioner were the same persons as those named on the 1839 Allotment List. Allottees ages are not provided on the 1839 Allotment List (see Appendix B in this PF for an interpretation of the list). For example, on the 1839 Allotment List there are three women named Elizabeth Dick, four named Hannah Dick, three named Harriet Dick, three named Mary Fowler, three men named John Dick, and three men named Laton Dick. To sort out the correct identities, OFA utilized Federal documents issued as addenda to the 1839 Allotment List, plat maps, and State and Federal censuses.

The appendix in W. DeLoss Love’s 1899 book identifies Indians from several New England tribes who were considered members of the Brothertown Indian tribe of New York. Descendants of some of the named progenitors moved to Wisconsin and became part of what evolved into the Brothertown Indian tribe of Wisconsin. Some received allotments of land in Wisconsin even though they did not move to Wisconsin until after the allotments were assigned or in some cases never moved to Wisconsin. Thus, the appendix in Love’s book cannot be considered a list of members of the Brothertown Indian tribe of Wisconsin, but presents information for some of the members of the Wisconsin Brothertown Indian tribe as well as for their ancestors who were members of the Brothertown Indian tribe of New York, a precursor tribe from which the Wisconsin Brothertown Indian tribe evolved. This document did not provide information useful for identifying the members of the Brothertown Indian tribe of Wisconsin in 1839. However, it does provide ancestry information helpful in distinguishing individuals who have the same or similar names on the 1839 Allotment List.

There are 55 surname-specific families profiled in Love’s 1899 work (Love 1899). However, the petitioner submitted genealogical reports (FTM outline descendant reports) for only 15 of these, even though the petitioner’s members also descend from several other families. Descendants of several of the remaining 40 families later married into the families outlined by the petitioner and are thus also ancestors of the petitioner’s members.

135 See additional discussion of the 1901 Miller Roll under criterion 83.7(b) and under this criterion.

136 Ages shown on Appendix B in this PF are derived from census records.
Descendants from most of the 55 families moved to Wisconsin between 1831 and 1845, although many family members stayed behind in New York.

The 1901 Miller Roll (BIA 12/31/1901) lists descendants of the Brothertown Indians of Wisconsin who were eligible to receive judgment awards as descendants of the New York Indians in the U.S. Court of Claims (Case No. 17,861) and is just one of several lists compiled for the New York Indians claims case. This claims case included descendants of “Six Nations of New York,” portions of which combined to form the Brothertown Indian tribe of New York. The 1901 Miller Roll is not a list of tribal members and does not identify an Indian entity, but it is a list of Indian descendants with a specified tribal origin particularly for the Brothertown Indians tribe of Wisconsin. Guion Miller, the Special Agent assigned to enumerate the New York Indians, including the Brothertown Indians of Wisconsin, considered a list submitted by the Brothertown [Wisconsin] Business Committee as a list of its members. The criteria used by the committee to compile the list of names submitted to Miller is not known, but the list did not include the names of women who had married “outside” of the tribe or their children. The committee’s list contained the names of “209 members.” The Government’s 1901 Roll listed 570 descendants of the Brothertown Indians of Wisconsin, including descendants of women who had “married out” of the tribe and were excluded from the 1839 allotment distribution. An additional list of 255 descendants was approved by the Court of Claims in 1906 (G. Miller 1/8/1906), bringing the total to 825 descendants.

Identifying the Wisconsin Brothertown descendants named on the 1901 Miller Roll was facilitated by the information contained on the individual applications submitted to the Government. These applications included names of children, parents, and grandparents, as well as residence and spousal information, and thus providing information which assisted OFA researchers in linking them to an individual living in 1839 who was a member of the historical Brothertown Indian tribe of Wisconsin. The Federal censuses of 1850 through 1900, which were not available to Miller in the early 1900s, also assisted OFA in the identification of parents, spouses, and children of the 1901 claimants. Appendix N in this PF lists the names of the petitioner’s claimed ancestors appearing on the 1901 Miller Roll and the 1906 Final Claims Roll (BIA 12/31/1901, G. Miller 1/8/1906).

The petitioner submitted a 72-page document entitled “Roll of Brotherton Indians of Wisconsin as of September 27, 1967” (BIA 12/23/1969), which included a cover page certifying that it is the “roll of Brotherton Indians of Wisconsin” and “contains only the names of those persons determined to meet the requirements of the Act of September 27, 1967.” This cover page displays a certification by Harold L. Laroche, Tribal Operations Officer. This is a descendancy list of individuals who are eligible for payment distribution based on their ancestry. It is not a list of tribal members and does not identify an Indian entity. However, it is a list of Indian descendants of a specified ancestry, identified by the title as the Brothertown Indian tribe of Wisconsin.

The 1967 Claims Roll for the Emigrants of New York Indians (ENY) lists 702 descendants of the Brothertown Indian tribe of Wisconsin, both adults and minors, and,
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for all except 14 of the claimants, identifies their claimed 1839 or 1901 ancestor, including that ancestor’s relationship to the person listed. Of these 702 claimants, 581 (83 percent) are listed in the petitioner’s FTM genealogical database, including 235 (33 percent of those listed on the 1967 Claims Roll and included in the 581 mentioned above) current members of the BIN petitioner. A total of 290 individuals listed on the 1967 Claims Roll have descendants in the current BIN membership. This document is helpful in identifying the claimed 1839 ancestors of current BIN members but does not provide documentation of descent from the historical Brothertown Indian tribe of Wisconsin.

The BIN Petitioner’s Genealogical Database

OFA reviewed the BIN petitioner’s genealogical database, using documents in the 3,230 enrollment files, genealogical reports (ancestor descendant charts), membership lists, and other documents in the record (BIN 2008, FTM). OFA staff entered into the petitioner’s genealogical database the membership numbers of all current members of BIN, 1839 Allotment List numbers for individuals receiving Wisconsin Brothertown allotments, and 1901 Miller Roll numbers and 1967 Claims Roll numbers for individuals appearing on those lists, while clarifying discrepancies in spelling and dates. Later in the analysis process, OFA staff entered additional information such as whether an individual appeared on current or past membership lists, whether an individual’s parentage had been verified, whether an individual’s generation-by-generation links were verified back to the 1901 Miller Roll, and whether an individual’s ancestry was verified back to a member of the historical Brothertown Indian tribe of Wisconsin in 1839. The descent conclusions presented in this PF were calculated from the Department’s augmented FTM genealogical database.

The BIN petitioner’s genealogical database included additional historical individuals whom the petitioner’s members claimed as ancestors and who were not specifically claimed as Indian, or who were not affiliated with the historical Brothertown Indian tribe of Wisconsin (BIN 2008, FTM). The BIN petitioner did not submit a narrative or analysis for criterion 83.7(e) describing or explaining its members’ ancestry claims, their connection to the historical Brothertown Indian tribe of Wisconsin, or their connection to the individuals on the 15 “genealogy reports.” Current BIN members were not annotated as such in the petitioner’s genealogical database and this information was entered by OFA researchers.

The comment period provides the BIN petitioner the opportunity to submit documentation that verifies dates and relationships, identifies claimed historical Brothertown ancestors, and demonstrates descent from the historical Brothertown Indian tribe for each member, and to ensure that the petitioner includes copies of all source documents cited in the group’s petition materials. The BIN petitioner’s 2008 genealogical database (BIN 2008, FTM) cites birth certificates or secondary sources such as “personal

137 This list was not annotated by the petitioner to indicate current members or if any of the persons on the 1967 Claims Roll are their ancestors, or are other relatives of the petitioner’s members. The petitioner is encouraged to make such annotation for the FD.
history” or ancestry charts for its members. However, these documents and sources for the data cited in ancestry charts, or appearing on family group sheets and descendant charts often were not submitted. Thus, OFA researchers were unable to verify birth dates, birthplaces, parents’ names, marriage dates and spouses’ names, or children’s names except for those members and their ancestors documented in the 3,230 enrollment files. However, OFA corrected and clarified information for modern and historical individuals in the FTM genealogical database, citing the evidence wherever warranted, based upon review of Federal census records or other documentary evidence in the record.

Summary of the Petitioner’s Descent from the Historical Tribe

OFA’s analysis of the documents in the record concluded that the evidence demonstrated complete generation-to-generation descent from an individual known to be a member of the Wisconsin Brothertown Indian tribe for 51 percent (1,593 of 3,137) of current BIN members. OFA’s evaluation also indicates that an additional 42 percent (1,309) of current BIN members have illustrated descent from at least one member of the historical Wisconsin Brothertown Indian tribe but the current available record does not contain the documentation to demonstrate that descent. The petitioner’s comments on the PF should include additional evidence to demonstrate the ancestry of these 1,309 members whose descent is not documented and any new members in the group.

The Department’s ability to verify all of the petitioner’s members, generation-by-generation back to their 1839 ancestors was hampered by the absence of primary, or even reliable secondary, information on generations between 1839 and 1901, and sometimes between 1901 and 1930. OFA attempted to locate records to document these missing generations but was not always successful. The petitioner should provide documentation for all generations linking the member to the historical tribe. The BIN petitioner has the opportunity during the comment period to provide the evidence that links the current members to the preceding generations back in time to the historical Brothertown Indian tribe of Wisconsin.

The petitioner’s genealogical database includes 235 BIN members (7 percent of the group) who are not linked to ancestors on the Brothertown 1839 Allotment List. Nor did evidence in the record identify their earlier generations, i.e., those ancestors associated with the Brothertown Indian tribe of New York. These members, therefore, are not known to have forebears who participated in the 1839 allotment of lands at Brothertown, Wisconsin, or who were unallotted members of the historical Brothertown Indian tribe of Wisconsin. Included in these 235 BIN members are 37 members descending exclusively from Thomas DeWayne Hammer (1814-1889) and 135 members descending exclusively from Mary Elizabeth (Hammer) Fowler (1816-1872).138 Also included are four members claiming descent from Milo Seketer (1830-?), Case #19 on the 1839 Allotment List, although genealogical information submitted by the petitioner’s indicates that these

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138 An additional 89 BIN members claim descent from these two individuals but the available record ties them to other ancestors who were allotted in 1839. Therefore, these 89 BIN members were not included in the number of Hammer descendants without ancestors allotted in 1839.
members descend from a Milo Collins (Abt. 1830-1898); the available record contains no evidence that these two individuals are the same person. The available record contains no birth parent information for nine current members of the BIN petitioner who are adopted, and thus their ancestry is unknown.

Appendix M in this PF lists the individuals on the 1839 Allotment List who have been identified as claimed, and in some instances verified, ancestors of the petitioner’s members. The last column in Appendix M contains the number of members claiming descent from each ancestor. The total number of these member descendants is considerably more that the petitioner’s current membership because many members descend from more than one Brothertown Indian ancestor. Intermarriage between ancestors and the enumeration of more than one generation within the same ancestral line on the 1839 Allotment list resulted in the total number of descendants from all ancestors being more than the actual number of descendants in the BIN membership.

Appendix N in this PF lists the individuals on the 1901 Miller Roll who have been identified as claimed, and in some instances verified, ancestors of the petitioner’s members. There are fewer ancestral lines of descent from these ancestors than there are ancestors listed because the 1901 Miller Roll included not only adults, but offspring and sometimes elderly parents as well, meaning that a family line may have two or more direct ancestors on the roll.

Although demonstration of descent from an ancestor on the 1901 Miller Roll does not demonstrate descent from the historical Wisconsin Brothertown Indian tribe, verifying ancestry to individuals on the 1901 Miller Roll may help to provide a link back to the historical 1839 Brothertown Tribe of Wisconsin.

Other Issues

Several members have verified descent to a collateral relative (e.g., an uncle or a great aunt) named on the 1901 Miller Roll and, although this does not demonstrate direct descent, the verification of a member’s ancestor as a sibling of an individual on the 1901 roll will link the member to the common parent, and then most likely to an ancestor on the 1839 Allotment List. The petitioner should consider the problem of “lateral descent” (from a collateral relative) when evaluating applicants’ ancestry for membership.

Several members of the petitioner claim descent from individuals on the 1839 Allotment List or the 1901 Miller through collateral descent. This descent relationship is demonstrated by Amelia “Millie” (Paul) Wamsley Smith (?-1850), from whom 57 current members of the BIN petitioner claim descent. Millie Wamsley was the sister of Nelson

139 Lateral ancestors on the 1901 Miller Roll claimed by current BIN members are Jane (Modlin) Lyons, who has no direct descendants in the petitioner and who had no known ancestor on the 1839 Allotment List, and Rosetta (Welch) McGill, who has no direct descendants in the petitioner but whose ancestor, Lucinda Brushel, was Case #214 on the 1839 Allotment List.

140 Collateral descent is not direct parent-to-child descent. It traces descent through an ancestor who was a sibling to an individual listed on a historical roll or membership list.
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Paul (Abt.1805-1899) and Elizabeth (Paul) Wiggins (1812-1861). Both Nelson Paul and Elizabeth Wiggins were included on the 1839 Allotment List but Millie Wamsley was not because she had married “outside” of the tribe and was no longer considered a member. Their father, Samson Paul (1778-?), was not included on the 1839 Allotment List. Their mother, Hannah (Brushel) Paul, identified in the appendix of Love’s 1899 book as the daughter of Samuel Paul, may be the Hannah Paul (Abt.1791-?) shown on the 1839 Allotment List as Case #135 (see Appendix B in this PF). If so, then Millie Wamsley’s descendants would be able to document their descent to an individual named on the 1839 Allotment List. However, the BIN petitioner’s genealogical database gives the maiden name of Samson Paul’s first wife as “Hannah Uncas.” The available record contains no information clarifying whether Hannah Brushel and Hannah Uncas are the same person. Without this clarification, the descendants of Millie Wamsley cannot claim descent from an ancestor on the 1839 Allotment List.

The comment period provides the BIN petitioner and interested parties the opportunity to better document their descent. The BIN petitioner may wish to provide an analysis of documents which it claims contain the names of members or ancestors of members, including highlighting or flagging the names of current members or ancestors of members shown in each document, or creating a separate list of the specific names in the document. If the identity of a person on the list is uncertain or incomplete, such as having only initials, or the wrong initials, or naming a person identified on another document in a different place at the same time, the BIN petitioner should include in its comments supporting documents or information to substantiate the identity of the claimed member or ancestor in question.

The BIN petitioner’s genealogical database and documents submitted by the petitioner indicate that many of the petitioner’s claimed ancestors married each other, thus merging surname lines. If the petitioner is unable to locate information to verify an “undocumented” generation in the ancestral line of one surname, documents may be available to verify every generation in a line of a different surname that married into the line lacking documentation.

Conclusion

The June 24, 2008, BIN membership list names 3,137 living members, both adults and minors. However, it is incomplete, that is, it does not contain all maiden names, birth dates, and residential addresses. These technicalities may be corrected for the FD.

This PF finds that 51 percent (1,593 of 3,137) of current BIN members have demonstrated descent from an individual identified as a member of the historical Brothertown Indian tribe of Wisconsin. Such a low percentage of documented descent from the historical tribe does not meet the requirement of criterion 83.7(e).141 However, this evaluation also finds that an additional 42 percent (1,309 of 3,137) have illustrated

141 No other petitioner for Federal acknowledgment has met criterion 83.7(e) with less than 80 percent of the membership documenting descent from the historical tribe.
descent from the historical tribe. The Department expects that the petitioner can submit the necessary documentation for the FD to verify this claimed descent.

For these reasons, the BIN petitioner does not meet the requirements of criterion 83.7(e).
Criterion 83.7(f)

83.7(f)  The membership of the petitionering group is composed principally of persons who are not members of any acknowledged North American Indian tribe.

With the assistance of the Bureau of Indian Affairs’ Great Lakes Agency and Midwest Regional Office in Minneapolis, Minnesota, the Department compared the BIN 2008 membership list to the current membership rolls of the following recognized tribes:

- Oneida Tribe of Indians of Wisconsin
- Stockbridge Munsee Community of Wisconsin
- Lower Sioux Indian Community in the State of Minnesota.

The Department identified 15 BIN members (less than 1 percent of 3,137) who are also enrolled with the Oneida Tribe of Indians of Wisconsin and an additional 26 BIN members who may be enrolled with the Oneida tribe, but whose identity could not be confirmed. A total of 41 members of the petitioner (about 1 percent of 3,137) may be enrolled with the Oneida tribe.

The Department identified 58 BIN members (about 2 percent of 3,137) who are also enrolled with the Stockbridge-Munsee Community of Wisconsin and an additional 41 BIN members who may be enrolled with the Stockbridge-Munsee tribe, but whose identity could not be confirmed. A total of 99 members of the petitioner (about 3 percent of 3,137) may be enrolled with the Stockbridge-Munsee tribe.

The Department found none of the BIN petitioner’s members enrolled with the Lower Sioux Indian Community in the State of Minnesota.

Conclusion

A review of the membership rolls of those federally recognized tribes that would most likely include the petitioner’s members revealed that 73 members of the petitioner (about 2 percent of 3,137) are enrolled with an acknowledged North American Indian tribe. An additional 67 BIN members (about 2 percent of 3,137) may be enrolled with a federally recognized tribe. It is possible a total of 140 members of the BIN petitioner (about 4 percent of 3,137) may be enrolled with federally recognized tribes.

The evidence in the record shows the BIN membership is composed principally of persons who are not members of any acknowledged North American Indian tribe. Therefore, the BIN meets the requirements of criterion 83.7(f).
Criterion 83.7(g)

83.7(g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

Introduction

Congress in March 1839 passed an Act “for the relief of the Brothertown Indians” in response to a memorial from those Indians. This Act allowed the Brothertown Indian tribe to distribute the lands of its reservation to its individual members and provided that if the tribe did so its members would become citizens. When the Brothertown Indian tribe complied with the provisions of the Act and submitted a report to the President of the United States, the Act provided that the tribe’s “rights as a tribe” and its “power of making or executing their own laws . . . shall cease” (U.S. Congress 3/3/1839). The Brothertown chose to utilize the Act passed at their request. They complied with its provisions by electing five members to serve as a board of commissioners who allotted the tribe’s reservation among its members and submitted the required report of their activities. The President received this report in November 1839.

The Act of 1839 stated that the Brothertown Indian tribe’s “rights as a tribe” recognized by the Federal Government, and specifically its power to act as a political and governmental entity, would “cease and determine,” that is, end and be limited permanently (U.S. Congress 3/3/1839). When the Brothertown Indian tribe complied with the requirements of the Act, this ban became effective. Because most of this petitioner’s members descend from members of the historical Brothertown Indian tribe at the time of the Act of 1839 (see criterion 83.7(e)), the limitation stated in that Act applies to this petitioning group. The acknowledgment regulations provide in this criterion that a petitioner whose Federal relationship has been terminated or forbidden cannot be acknowledged. Congress in the Act of 1839 brought Federal recognition of the relationship with the Brothertown Indian tribe of Wisconsin to an end. By expressly denying the Brothertown of Wisconsin any Federal recognition of a right to act as a tribal political entity, Congress has forbidden the Federal Government from acknowledging the Brothertown as a government and from having a government-to-government relationship with the Brothertown as an Indian tribe. The Act of 1839, by its “cease and determine” language, has both expressly ended and forbidden the Federal relationship for this petitioner.

The petitioner’s presentation for this criterion consists of a single paragraph in its submission in 2005 (BIN 2005, 118). The petitioner cites two documents as evidence for this criterion. The first is an affidavit by its tribal chairperson attesting that the quoted language of this criterion applies to the petitioning group (Lambert [12/19/2005]). The second is a copy of a memorandum written by the Acting Associate Solicitor, Division of Indian Affairs, of the Department of the Interior (Etheridge 8/19/1993). The petitioner offers a brief interpretation of the Act of 1839 in its submission in 1996 in a narrative entitled “83.7(a)” (BIN 1996, 70-71; see also, BIN 2005,
60-62). An affidavit stating that the petitioner meets the criterion is not evidence that is sufficient to meet the criterion. The Associate Solicitor’s memorandum is discussed below in a section entitled “Prior Opinions of the Office of the Solicitor.” This proposed finding evaluates evidence relating to the Act of 1839 in the following sections.

Evaluation

Intent of the Act of 1839

Congressional consideration of potential legislation that resulted in passage of the Act of March 3, 1839, began on March 26, 1838, when a memorial from Brothertown Indians was presented to the United States Senate. The Journal of the Senate described the memorial as one from “Daniel Dick and others,” who were Brothertown Indians residing in Wisconsin Territory, that requested they “be allowed to become citizens of the United States” (Senate Journal 3/26/1838, 317). First the Senate Committee on Indian Affairs and later the Senate Committee on Public Lands considered the memorial, but neither committee reported a bill on behalf of the Brothertown (Senate Journal 4/5/1838, 338, and 7/7/1838, 551-552). The available evidence does not reveal that the House of Representatives received the memorial or considered the Brothertown request in 1838.

At the next session of Congress, a memorial from Brothertown Indians was presented to the House of Representatives on January 7, 1839. The petition requested “an act of Congress authorizing the Brothertown tribe to become citizens” and to have “the privilege of making the division . . . of their lands” into tracts with “individual” title (D. Dick et al. 10/18/1838). The Journal of the House described the memorial as one from a “tribe” that requested its members “be acknowledged citizens of the United States” and receive “an equal division of their lands” (House Journal 1/7/1839, 209). In response to the memorial, the House Committee on the Territories reported a bill, H.R. 1112 “for the relief of the Brothertown Indians,” on February 6, 1839, and the House passed the bill without amendment on February 12 (House Journal 2/6/1839, 489, and 2/12/1839, 526; U.S. House 2/6/1839). The Senate Committee on Indian Affairs reported the House bill without amendment and the Senate passed it on March 3, 1839 (Senate Journal 2/28/1839, 292, and 3/3/1839, 351). No debate on the bill is noted in the records of the proceedings of either the House or the Senate. The President signed the bill the same day it passed the Senate. Thus, the public record of Congressional consideration of the bill reveals it passed quickly with no apparent controversy over its provisions.

Congress provided a statement of the purposes of this legislation only in the report on the bill by the House Committee on the Territories (U.S. House 2/6/1839). The Committee said it prepared the bill in response to the petition of the Brothertown Indians (p.1). It characterized that petition as a request “to be admitted to the rights of citizenship, and to have their lands partitioned and conveyed to them in fee simple” (p.3). It described the bill as “authorizing the Brothertown Indians to divide and partition their lands” to their individual members “in fee simple,” and conferring “upon them the rights of citizenship” (p.4). The Committee thus described the bill as giving the Brothertown Indians what they had requested. It also emphasized, however, that the “first point” it considered “was the wishes and feelings of the people of Wisconsin Territory”
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(p.3) because “the first duty of our Government is to our own citizens” (p.4). The Committee indicated that it relied upon information from Wisconsin’s territorial delegate and reported the bill favorably on an understanding that there was support in the territorial legislature for the Brothertown request and no objection in the Territory to the Brothertown petition (p.2, 3).

The Act “for the relief of the Brothertown Indians” of March 3, 1839, provided that the township of land reserved by treaty “for the use of the Brotherton or Brothertown Indians . . . may be partitioned and divided among the different individuals composing said tribe,” who would then own that land individually “in fee simple” and receive a Federal land patent (U.S. Congress 3/3/1839). The Act described the procedures the Brothertown Indian tribe would need to follow to achieve this goal. The tribe was required to hold an election, supervised by a Federal official, to choose five of its members to serve as a “board of commissioners.” The official who supervised the tribal meeting was required to file a certification of the results of the election with the Federal land office and to transmit a certification to the President of the United States. The board of commissioners was required to divide the tribe’s lands among its members, attempting to allot existing farms to their present occupants. After doing so, the board of commissioners was required to prepare a report of its proceedings, including a list and map of the allotted lands, and to transmit a copy of the report to the office of the clerk of the county, the office of the secretary of Wisconsin Territory, and the President of the United States.

If the Brothertown Indians complied with these provisions, the Act of 1839 stated they then would “be deemed to be . . . citizens of the United States” and “their rights as a tribe or nation” recognized by the Federal Government would “cease” (U.S. Congress 3/3/1839, sec.7).

Congress did not direct that the lands of the Brothertown Indian tribe be divided among its members, but authorized the tribe to do so. Congress did not compel the Brothertown Indians to become citizens rather than tribal members, but allowed them a way to achieve citizenship. According to the Act, the new status of the Brothertown Indians as citizens would become effective when the final report and map prepared by their board of commissioners was “filed and transmitted to the President” as described in the Act (sec.7). The Act did not make the grant of citizenship to Brothertown Indians and the loss of their “rights as a tribe” contingent upon any action subsequent to the filing and transmittal of the final report. Congress stated its intent in the Act of 1839 that, if the Brothertown Indian tribe filed a report of the division of its lands, the tribe’s “power of making or executing their own laws . . . as such tribe, shall cease and determine” (sec.7).

Dictionaries define “cease,” used as an intransitive verb as in the Act of 1839, as “to come to an end” (Webster’s II). The verb “determine” may also be used to mean “to come to an end” (Black 1910, 362). The Act of 1839 did not use either word alone to bring to an end a federally recognized right of the Brothertown Indian tribe to exercise tribal political powers but joined both words in the phrase “cease and determine,” implying that “determine” added meaning beyond a mere cessation of activity. The Oxford English Dictionary, which tracks the historical use of English words, notes that the verb “determine,” used as meaning “to put an end or limit to” or “to come to an end,” is used chiefly in law (OED 1991, 4:549-550). That dictionary defines the intransitive verb “determine” as “to come to an end; to cease to exist or be in force; to expire, to die.” As a transitive verb, it defines “determine” as “to put an end to (in time)” and further as “to end, conclude, terminate.” The phrase “cease and determine” thus stated that
Federal recognition of tribal rights and powers not only would be discontinued, but also would be brought to a permanent end. By denying the Brothertown Indians of Wisconsin a federally recognized right to act in the future as a tribal political entity with powers of self-government, Congress has forbidden a Federal relationship with a Brothertown tribal political entity.142

The petitioner contends that the only effect of the Act of 1839 was to extend the jurisdiction of the United States and the Territory of Wisconsin over the former Brothertown Indian reservation. The Act did that, but it did more than that. The petitioner contends that: “In other respects, the power of the tribe to act was not diminished by the statute” (BIN 1996, 71). However, the Act explicitly said the Brothertown Indians’ rights “as a tribe” and their power of making their own laws “as such tribe” would cease (U.S. Congress 3/3/1839, sec.7). This language affected the jurisdiction of the tribe as a tribe, not merely the jurisdiction over a specific geographical area. Federal policy at that time considered civil and tribal jurisdiction to be mutually exclusive. For example, an 1870 report of the United States Senate concluded that Indian tribes had retained “their right to govern themselves” as “a separate political community” and that Congress did not regard them or their members “as subject to the municipal jurisdiction of the United States” (U.S. Senate 12/14/1870, 2, 9). In the Federal relationship between the United States and an Indian tribe, the United States deferred to the tribe’s jurisdiction over its members. Without that Federal recognition of the right of an Indian tribe to enact its own laws for its members, there was no government-to-government relationship between the United States and an Indian tribe.

Compliance with the Terms of the Act of 1839

The Brothertown Indian tribe utilized the authority granted it by the Act of 1839 to elect a board of commissioners, divide its lands among its members, prepare a report with a list and map of the assignment of lands, and transmit that report to the county and the President of the United States. It thus voluntarily complied with all the requirements of the Act. No additional actions by the Brothertown Indian tribe or the Federal Government were necessary for the Act to become effective. Both Congress and Federal agencies subsequently acted on an understanding that the tribe had complied with the requirements of the Act. Congress appropriated funds to reimburse the tribe’s commissioners for the expenses of partitioning the tribe’s lands and the General Land Office prepared land patents for the tribal members who were designated to receive land. The Commissioner of Indian Affairs and the State Supreme Court both later described the Act as having been complied with completely.

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142 The petitioner’s researcher and attorney in the 1980s recognized the language of the Act of 1839 as a serious problem for a successful petition. In 1985, anthropologist Jack Campisi informed the Brotherton Tribal Council that, in view of the requirements of criterion 83.7(g), the “cease and determine” sentence in section 7 of the Act “seems to preclude a successful petition” (Campisi 2/17/1985). He also informed the council that the previous anthropological researcher, Robert Gough, believed this language in the Act of 1839 constituted termination of the Brothertown tribe. Campisi recommended the council seek a legal opinion on the issue. Two years later, an attorney for the Native American Rights Fund recommended to the Council that it pursue litigation or legislative recognition rather than a petition for acknowledgment. Arlinda Locklear informed a group member in 1987 that she had concluded “the prospects are poor for the tribe to obtain federal recognition administratively” (Locklear 3/2/1987). Locklear specifically stated that if the Brothertown were to file a petition for acknowledgment, “Interior would likely interpret the 1839 act as termination legislation.”
The Brothertown Indians held a tribal election at which they elected five of their members as a board of commissioners. This election was supervised by a Federal official, John S. Horner, the Register of the Federal land office in Green Bay, Wisconsin. The commissioners stated that they were chosen in a tribal election held on July 1, 1839, at which a “U.S. officer” presided. They described the election as being held pursuant to the Act of 1839 (Anthony et al. 10/-/1839, 1, 4). Horner, the Federal officer, prepared a record of the proceedings of the election he supervised, identified the five men elected as commissioners, and reported that the board of commissioners had organized, apparently on the day following their election. The Brothertown Indian tribe fulfilled a requirement of the Act of 1839 by holding a tribal election and creating a board of commissioners. Horner complied with a requirement of the Act of 1839 by transmitting a certification of the election to the President of the United States (Horner 7/2/1839).143

The Brothertown Indian tribe, acting through its elected board of commissioners, divided its tribal lands among its individual members. The commissioners stated that, after their election, they immediately started to discharge their duties under the Act of 1839 (Anthony et al. 10/-/1839, 1).144 They appear to have begun their apportionment of the lands of the reservation by calculating that the acreage available divided by the number of eligible individuals allowed “sixty acres a piece” (p.2).145 The commissioners allowed resident adult members to select 50 acres of land in one tract, allowing married members to select contiguous tracts (p.3).146 Other members were assigned 50 acres by a random drawing (p.3). Each member received an additional 10 acres, with these fractional shares of members of a family grouped together in a single body of land (p.4). The commissioners claimed that all “improvements,” whether buildings or cultivation, were retained by their original owners (p.4). The board of commissioners complied with a requirement of the Act of 1839 by dividing the tribe’s lands among its members. Congress appropriated funds to pay the expenses of that task and justified that payment as a result of these “duties having been performed” (U.S. Congress 7/21/1840).

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143 The petitioner submitted a transcription of Horner’s letter and certification. OFA researchers obtained copies of the original documents at the National Archives. The cover letter and certification identify the five men elected commissioners, although the two documents differ on one of these names. The cover letter named Charles Abner Sr. but the certification named Charles Anthony; the commissioners’ report to the president was signed by Anthony. The five tribal members elected as commissioners were: Randal Abner Sr., Charles Anthony, Thomas Cummuck [Commuck], Alonzo Dick, and David Johnson.

144 Citations to page numbers in this document are to the petitioner’s transcription. The original document is not paginated.

145 The commissioners provided an extensive discussion of how they resolved their most difficult questions of membership and eligibility: how to treat women who had married out of the tribe, women who had married into the tribe, and individuals who asserted claims to inherit a share of lands that would have resulted in members receiving tracts of land of unequal size (Anthony et al. 10/-/1839, 1-3).

146 The tribe had previously allotted its reservation lands to members in individual tracts. The State Supreme Court said in 1885 that a tribal allotment had been approved by a “town meeting” of the tribe in September 1835 (Fowler v. Scott 1885, 718). The Court suggested that the allotment under the Act of 1839 was done in conformity with the existing tribal allotment of 1835. Several sources indicated that the tribe had allotted its lands in 100-acre parcels. This prevailing practice would appear to explain why the allotment under the Act of 1839 provided contiguous 50-acre tracts for husbands and wives.
The board of commissioners satisfied a requirement of the Act of 1839 by preparing a report of its proceedings with a list and map of the allotted lands. The board submitted this report on its activities to President Martin Van Buren (Anthony et al. 10/11/1839). In that report, the commissioners referred to “the list of claimants annexed to this report” (p.2). The original handwritten report in the National Archives indicates it was received by the President on November 26, 1839. The report then was forwarded by the Office of Indian Affairs to the General Land Office in June 1840 (Crawford 6/12/1840). The General Land Office, in a letter in 1842 to the board of commissioners inquiring about six cases included in its report, acknowledged the existence of the board’s report and accompanying list of individual land recipients (see Commuck et al. 4/2/1845). It treated the report as having carried out the provisions of the Act of 1839 and issued patents to individuals listed in the report.

There was some question at the time whether or not a copy of the report, list, and map had been filed with the clerk of the county, which at that time was Brown County of Wisconsin Territory. Depositions given by Brothertown commissioners and the new county clerk during legislative hearings in 1841 on a contested election produced confusing testimony on this issue (Wisconsin 1841). The territorial legislature accepted voting by the Brothertown in that election, which implied that the legislature accepted that the commissioners’ report had been filed with the county in compliance with the Act of 1839. An 1885 opinion of the Wisconsin Supreme Court found that the board of commissioners filed a copy of its report and accompanying map with the register of deeds of Calumet County (Fowler v. Scott 1885, 718-719). In the 1950s, the staff of the Wisconsin Historical Society found copies of the report and map in the records of Calumet County, and more recently researchers for the petitioner said they transcribed the handwritten document in the courthouse (Wisconsin Historical Society c.1955, n.d.; see folder I.C.3.f6 in the Tousey Collection). The board of commissioners complied with the final requirement of the Act by filing a copy of that report with the county and transmitting the report to the President of the United States.

The Act of 1839 set forth the requirements the Brothertown Indian tribe would need to satisfy if it chose to utilize the provisions of the Act. The tribe was required to hold an election. A Federal official was required to certify the results of that election. The elected board of commissioners was required to divide the tribe’s lands among its members, to prepare a report

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147 The petitioner submitted a transcription of the report and a 9-page list. OFA researchers obtained at the National Archives a copy of the original handwritten report and its attached list of allottees.

148 The Act of 1839 did not make the tribe’s loss of its “rights as a tribe” contingent upon its members’ receipt of land patents, but there is evidence in the record that these patents were issued (United States 6/9/1842 to Samson and Wiggins; Commuck et al. 4/2/1845; Fowler and Starkweather 2/7/1876; Senate 4/2/1878; Fowler v. Scott 1885; and “Brothertown Allottees” n.d. [dated by note of Guion Miller 9/3/1903], a document that referred to patents issued in 1842 and 1845).

149 The Wisconsin Historical Society introduces its microfilm collection of Brothertown documents that includes the 1839 report with the note: “These records have been microfilmed from original manuscripts in the files of Calumet County. The originals were loaned by Calumet County to the State Historical Society for copying in November, 1955” (Wisconsin Historical Society c.1955). The Wisconsin Historical Society’s note on the provenance of its copy of the 1840 allotment map by George Featherstonhaugh states it was “copied from the original map in Calumet County Register of Deeds Office” (Wisconsin Historical Society n.d.).
with a list and map of the allotments, and to submit copies of its report to county, territorial, and Federal officials. Evidence in the record indicates the Brothertown Indian tribe and its board of commissioners complied with all of these requirements of the Act. The General Land Office issued patents in 1842 and 1845 on an understanding that the tribe had complied with the Act. The Commissioner of Indian Affairs in 1855 referred to the Act of 1839 as having been “fully executed” (Manypenny 1/25/1855, 28). The State Supreme Court in an 1885 opinion concluded that “the provisions of the act . . . are complied with in every particular” (Fowler v. Scott 1885, 719).

The Brothertown Indian tribe’s loss of a Federal relationship contrasts with the history of the neighboring Stockbridge and Munsee Indian tribe. Congress in 1843 passed an act relating to the Stockbridge tribe that copied the language of the Act of 1839 for the Brothertown (U.S. Congress 3/3/1843). A local historian in the 1850s said the Stockbridge were “terminated” by this Act (Hyer c.1850s). In 1846, Congress passed an act that repealed the Act of 1843 and stated that the “Stockbridge tribe . . . is restored to their ancient form of government” (U.S. Congress 8/6/1846). This legislation was a response to conflict among the Stockbridge between an “Indian party” and a “citizen party.” The Act of 1846 required the Indian agent at Green Bay to identify those Stockbridge Indians who desired to be citizens. It directed the Indian agent then to divide the township of land held by the Stockbridge tribe into two districts, in proportion to the number in the respective parties, to be “designated as the Indian District and the Citizen District.” Those Indians who chose to be citizens were to receive a tract of land and title in free simple. The lands in the Indian District were to be held in common.150 By passing this 1846 statute, Congress acted to restore a government-to-government relationship with the United States to a portion of the Stockbridge tribe in a way it did not act for the Brothertown.151

Annuity Payments and Provisions of the Act of 1839

The Act of 1839 specifically provided that Brothertown Indians could receive annuity payments due them in the future. After declaring that the Brothertowns’ “rights as a tribe . . . shall cease,” the Act stated that “nothing in this act shall be so construed as to deprive them [Brothertown Indians] of the right to any annuity now due to them from the State of New York or the United States” and they may “receive any such annuity . . . as though this act had not been passed” (U.S. Congress 3/3/1839, sec. 7). Congress provided that if Brothertown members were due future compensation based on past obligations they would not be deprived of such payments as a result of their loss of a federally recognized right to govern themselves as an Indian tribe. Congress would not alter the existing obligations of the State of New York. Congress thus expressly provided in this instance that individuals did not need to be members of an Indian tribe with a Federal relationship to receive annuity payments previously promised to them. The Act of 1839

150 The Stockbridge and Munsee Indian tribe relocated from their reserved lands neighboring the Brothertown by the provisions of a Treaty of 1856 (see Royce 1900, map Wisconsin 2, Areas 272 and 403, and pp.780-1, 814-7).

151 Congress also revealed how it restored a government-to-government relationship with the United States by using language that explicitly stated that purpose in an 1867 treaty that reestablished a Wyandot Indian tribe, which had been terminated by an earlier 1855 treaty. The treaty of 1867 stated an intent to enable a portion of the Wyandot Indians “to begin anew a tribal existence” and limited the restored tribe’s membership to those people “who declare their desire to be and remain Indians, and in a tribal condition” (United States 2/23/1867, preamble and art. 13).
made the future receipt of Brothertown annuities compatible with citizenship and an absence of tribal membership.

The record contains evidence Brothertown Indians received annuity payments from the State of New York until 1841, but no evidence they ever received Federal annuities. The Wisconsin Supreme Court in an 1885 decision suggested that a Brothertown Indian tribe may have continued to exist after 1839 at least to be able to receive annuities, interpreting the Act of 1839 as allowing a tribe to do so (Fowler v. Scott 1885, 721). The Court cited no evidence of the receipt of annuities. It assumed that any annuity payments would be made to a tribal entity. The record does not contain evidence that any annuity was paid to a tribal governing body by either the State of New York or the Federal Government. A New York State list in 1833 of Brothertown Indians entitled to an annuity contained the names of individual recipients and the various amounts due them (New York 7/6/1833). In general, Federal annuity rolls during the 19th century listed amounts due individual recipients. However, no Federal annuity roll for Brothertown Indians was submitted by the petitioner or found in Federal records. Neither the treaty to which the Brothertown Indians were a party nor other treaties which may have referenced them provided the tribe or its members with annuities from the United States (United States 10/27/1832; see also United States 2/8/1831 and 1/15/1838).

The evidence in the record relating to annuity payments after the Act of 1839 relates to actions of the State of New York. The State held funds on behalf of the Brothertown Indians in the State treasury and paid interest to beneficiaries of the fund. In 1841, the State decided to stop making interest payments and to pay out the principal to Brothertown Indians (New York 5/25/1841; Davidson 1895, 71). The New York State Act of 1841 did not specify payment to a tribal governing body or a tribal leader of the Brothertown Indians in Wisconsin, but rather authorized payment to “be made to the person or persons authorized to receive the same” (New York 5/25/1841, 214). The State accepted two individuals to represent the Brothertowns in Wisconsin and New York. The State and these representatives agreed upon lists of the individuals constituting three contemporary Brothertown groups: those individuals (N=259) who had migrated to Wisconsin, those individuals (N=50) in New York who intended to migrate to Wisconsin, and those individuals (N=98) in New York who would remain there (New York Land Office 6/8/1841, E. Dick 6/8/1841a, E. Dick 6/8/1841b). The evidence in the record does not show whether the State distributed the funds in its treasury to the two representatives or to the individuals on these lists.

When an Indian tribe due treaty annuities continued to be acknowledged by the Federal Government, annuities were paid to tribal members. A Federal relationship existed because of the treaty, and annuity payments followed from treaty provisions. Absent other action to end an Indian tribe’s relationship with the United States, the Department of the Interior interpreted the Federal relationship with such an Indian tribe as continuing until the payment of all treaty annuities had been made, thus fulfilling the Government’s treaty obligations, or at least one of its obligations under a treaty. When treaty annuities were paid to members of a previously acknowledged Indian tribe, acknowledgment precedent has considered the date of the final annuity payments to be the date of last Federal acknowledgment of the historical Indian tribe. For the Brothertown Indian tribe of Wisconsin, the lack of evidence in the record of its members’ receipt of treaty annuities provides no basis to interpret its last date of Federal acknowledgment
as later than the date of the tribe’s compliance with the Act of 1839. However, even if there were evidence of treaty annuity payments, there is evidence of congressional action to end a Federal relationship with the Brothertown Indian tribe of Wisconsin prior to the final payment of any annuities.

The Act of 1839 provided that annuities, whether due by Federal treaty or State land acquisition, could continue to be paid to Brothertown descendants when the Brothertown Indian tribe was no longer acknowledged by the Federal Government. This express statutory provision for one historical Indian tribe is similar to the general principle later adopted in the award of compensation for Federal taking of tribal lands in cases before the U.S. Court of Claims and the Indian Claims Commission. In such cases, it was not necessary for a historical Indian tribe to be currently acknowledged by the Federal Government for a judgment to be awarded it as compensation for the historical taking of its territory. In addition to judgment awards paid to currently acknowledged Indian tribes as successors of a historical tribe, such monetary awards were often distributed to the lineal descendants of a historical Indian tribe who were not required to be members of a tribe with a tribal relationship with the United States to receive a share of the compensation due the historical tribe. Any annuity payments to Brothertown Indians after 1839 would be consistent with such practice as well as based upon express statutory authorization.

Interpretations of the Act of 1839

In the decades following passage of the Act of 1839, evidence in the record shows that Federal and State officials interpreted the Act as having ended the Federal relationship with the Brothertown Indians as an Indian tribe. Former tribal members referred to themselves as now being citizens. A number of modern scholars have described the Brothertowns as having lost their Federal acknowledgment as an Indian tribe as a result of the Act. After 1839, the Office of Indian Affairs did not maintain a relationship with a Brothertown Indian tribe. The Territory and State of Wisconsin treated Brothertown Indians as citizens with the right to vote and hold office, rather than as tribal members subject to the jurisdiction of their tribe. Congress did not act to restore the relationship of Brothertown Indians with the Federal Government as an Indian tribe. The Department of the Interior construed the Act of 1839 as having ended a Federal relationship with the Brothertown Indian tribe and later legislation and judicial decisions did not result in the Department changing this interpretation or its policy. During the 19th century, Federal and State Governments and Brothertown Indians themselves considered the Brothertowns’ relationship with the United States as an Indian tribe as having ended.

After 1839 Brothertown descendants referred to themselves as having become “citizens.” A contract they made in 1854, to pursue a claim for compensation for lands the Brothertown Indian tribe allegedly ceded prior to the Act of 1839, referred to the claimants as the “Brothertown Nation of Indians (now citizens)” (W. Dick et al. 3/31/1854). In an 1855 letter published in 1859, Thomas Commuck wrote, as a member of the group, that the Brothertown Indians “are

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152 The Federal census of 1840 for Calumet County was prepared by a Brothertown descendant, Randal Abner Sr. That census enumeration excluded “Indians not taxed,” that is, Indians in tribal relations. By listing Brothertown descendants on the 1840 census, this Brothertown descendant indicated he did not consider himself and other Brothertown descendants to be “Indians not taxed.”
now enjoying all the rights, privileges, and immunities of citizenship.” He said the Brothertown Indians, at their request, had been granted citizenship by the Act of 1839 and that “[f]rom that time they have lived under the laws of the State” (Commuck 1859). An 1876 statement on behalf of the “Brothertown Indians” said they were “declared citizens of the United States” by the Act of 1839 (Fowler and Starkweather 2/7/1876). In 1881, a “power of attorney” was signed by individuals who described themselves as “formerly members of the Brothertown tribe of Indians” and said they claimed money due “the late Brothertown tribe of Indians” (Niles et al. 10/29/1881).153 Such references to new citizenship implied a contrast to former tribal membership, while the 1881 document expressly noted a loss of tribal acknowledgment.154

The Territory of Wisconsin in 1841 recognized that Brothertown Indians had become citizens and therefore had the right as citizens to vote in elections in the territory. The territorial legislature allowed the votes of Brothertown Indians to be counted after considering a contested election case in which one of the questions in dispute was whether or not Brothertown Indians, as a result of the Act of 1839, were entitled as citizens to vote in the election of 1840 (Strong 1885, 327-330; Wisconsin 1841). Brothertown descendants went on to hold office in township, county, territorial, and State government in Wisconsin (see the discussion in criterion 83.7(c)). During the 19th century Americans understood United States citizenship to be incompatible with tribal membership (see U.S. Attorney General 7/5/1856; U.S. Senate 12/14/1870; Cohen 1945, 154-155, 157-158; Prucha 1984, 682-686).155 Tribal members were not taxed and did not vote in state or national elections. The 1848 constitution of the State of Wisconsin denied the right to vote to members of Indian tribes but granted it to Indians who had been made citizens by an act of Congress (Wisconsin 1848, art. III). By recognizing the right of Brothertown descendants to vote and to hold office after 1839, the Territory and State of Wisconsin demonstrated that they considered Brothertown Indians to be citizens rather than tribal members.

The Act of 1839 did not require the board of commissioners to submit its final report to the Office of Indian Affairs. This omission indicated Congress did not expect the Brothertown Indians to have a continuing relationship with the Indian Office.156 The report transmitted to the President as required by the Act was forwarded to the General Land Office for the purpose of issuing land patents to the individuals listed. After 1839, the annual reports of the Commissioner of Indian Affairs did not discuss the Brothertown as an Indian tribe (ARCIA 1839-1844). Commissioner Crawford in 1842 expressly excluded the Brothertown from a survey of Indians because they had “been placed upon a footing with our own citizens” by Congress (Crawford

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153 John Niles, who signed this “power of attorney,” later expressed his opinion to the same attorney that, “In regard to the old customs which we were under before we were citizens of the United States it has always been plain to me that we are now at liberty to transact our own individual matters and not pay any attention to former customs” (Niles 3/6/1892).

154 A Brothertown descendant testified in 1903 during the claims application process that the “Brothertown tribe as an organization was broken up” by the Act of 1839 (O. Johnson 1903, 43).

155 Citizenship has not been incompatible with tribal membership since the Act of June 2, 1924 (43 Stat. 253), declared all Indians born within the territorial limits of the United States to be citizens of the United States.

156 In 1878, a U.S. senator commenting on Brothertown Indians observed that there were no records in the Indian Office “affecting the title to their lands” (Ingalls 3/20/1878).
11/16/1842, 1). Commissioner Manypenny in 1854 anticipated that another Indian tribe might “like the Brothertown . . . dissolve their tribal organization and become citizens” (Manypenny 11/25/1854, 4). In an 1855 report to Congress, the commissioner said that the Brothertown Indians “became citizens” by the Act of 1839 and that “the department has not exercised any supervision over them” since the allotment of their lands. Commissioner Manypenny concluded that by the terms of the Act of 1839 the Brothertown Indians “lost . . . their relations to the government as an Indian tribe” (Manypenny 1/25/1855, 28).

The Department of the Interior’s “only connexion [sic] with” the Brothertown Indians, according to Commissioner Manypenny, was that for “a few years” the local Indian agency had applied a portion of the discretionary funds provided for education by a treaty “to the education of their children” (Manypenny 1/25/1855, 28). He cited reports of the Green Bay Sub-Agency from 1846 to 1849, although only the 1847 and 1848 reports referred to providing funds for education to local government. The agent reported in 1846 that the Brothertown Indians had two schools “under the territorial township system, (for they are citizens of the United States),” indicating these schools were not operated by the Indian Office (Ellis 9/24/1846). In 1847, the agent said that the “Brothertowns have laid aside entirely their character as an Indian tribe—having become citizens of the United States. The only cognizance this agency has of them is a supervision of the expenditure of the fund for educational purposes” (Ellis 9/30/1847; see also Ellis 9/28/1848, Huebschman 9/28/1854). A new agent in 1849 reported that the “Brothertowns . . . are made, by act of Congress, citizens of the United States” and that some of them held public office “under our State organization” (Bruce 10/27/1849). This evidence indicates some Federal funding of public education as a brief exception, but not a Federal relationship with a tribal entity.

Records of the Office of Indian Affairs reveal the absence of a Brothertown relationship with the United States as an Indian tribe in the decades following the Act of 1839. In the annual report of the Commissioner of Indian Affairs in 1855, Commissioner Manypenny stated that the Brothertown “are in the enjoyment of all the privileges accorded to the citizens of the State of Wisconsin” (Manypenny 11/26/1855, 2). The next year a superintendent attached to his annual report a statement of the Indians of Wisconsin and the Northern Superintendency that did not include the Brothertown (Huebschman 10/15/1856). The lack of Federal acknowledgment of a Brothertown Indian tribe in the 1870s is apparent in a draft bill proposed by the Secretary of the Interior in 1876 to transfer jurisdiction of Wisconsin tribes from the Federal Government to the State, and in the annual reports in 1877 of the two Indian agencies in Wisconsin. The Secretary’s draft bill named the “Chippewas, the Menomonees, the Oneidas, and the Stockbridges” as the Indian tribes of Wisconsin (Chandler 1/27/1876). The Green Bay Agency and the La Pointe Agency identified the tribes of their agencies as the Oneida, Stockbridge, Menomonee, and Chippewas of Lake Superior (ARCIA 1877, iv, 202-207). Brothertown Indians were not included among the tribes of the State.

157 Commissioner Manypenny and Superintendent Huebschman cited the treaty of August 11, 1827, as the authority for these educational expenditures (Manypenny 1/25/1855; Huebschman 9/28/1854). Article 5 of that treaty—with the Chippewa, Menominee, and Winnebago—including children of the “New York Indians,” not specifically the Brothertown, as beneficiaries of such appropriations (United States 8/11/1827). This article was amended by a later treaty (United States 2/8/1831, art. 5). The Treaty of 1827 did not provide educational expenses as an annuity, but as a discretionary appropriation (United States 8/11/1827, art. 5).
A congressional Act of 1878 sought to correct a problem that had arisen in the implementation of the Act of 1839, but it did not restore a Federal relationship with the Brothertown as an Indian tribe. Congress in 1878 passed legislation in response to a memorial from “Brothertown Indians” that claimed the allotment they made of their former reservation lands under the Act of 1839 failed to include certain small tracts of land (Fowler and Starkweather 2/7/1876). The Act of April 20, 1878, designated certain individuals as trustees to sell those unallotted and unpatented lands and to distribute the proceeds among Brothertown Indians (U.S. Congress 4/20/1878). The legislative history of the Act of 1878 indicates that Congress sought to correct a perceived inadvertent error relating to what it said was about 100 acres in total. The managers of the bill in both the House and Senate, and the Senate committee in its report, emphasized that the bill sought to benefit individuals who were now “citizens” (Morgan 2/8/1878; U.S. Senate 4/2/1878; Oglesby 4/9/1878). Senator Ingalls, a floor manager of the bill, stated that the Brothertown Indians “have dissolved their tribal relations” (Ingalls 3/20/1878). The Senate committee argued that “the parties in interest are citizens and competent to decide for themselves as to the best disposition to be made of the lands” (U.S. Senate 4/2/1878).

The congressional committees and the floor managers of the bill stated no intent to reestablish or recognize a tribal entity to act as trustee, or to restore a Federal relationship with an Indian tribe. They referred to individual trustees as citizens acting on behalf of other citizens. However, the language of the Act, which incorporated text from the Brothertown memorial, was not necessarily consistent with this stated intent. Section 1 of the Act of 1878 authorized the General Land Office to give “full title to the Brothertown Indians” of the township of land previously reserved for them by treaty (U.S. Congress 4/20/1878). Title to almost all of that land had already been patented to individuals under the provisions of the Act of 1839. In practice, then, this language pertained only to those tracts of land not assigned by the report of the board of commissioners in 1839. However, this language in the first section was superseded by the next section that assigned title to those same tracts. Section 2 authorized the General Land Office to issue a patent for the “unpatented” lands in that township to four named individuals “in trust for the Brothertown Indians.”

The Act of 1878 authorized the issuance of a patent to individual trustees, not to a tribal entity or governing body. The Act provided these trustees could sell these lands “to the highest bidder” (U.S. Congress 4/20/1878). It did not provide the lands be sold or allotted to Brothertown Indians, but allowed them to be sold to anyone. The Act provided that these land sales could take place when “a majority of said Brothertown tribe” petitioned to do so. The trustees were to distribute the proceeds of the sales to Brothertown Indians according to the “former usages, customs, and regulations” of the tribe. The Act of 1878 thus referred to action by a tribe in the future, while describing its customs and regulations as things of the past. If the Act granted political functions to tribal descendants, it did so for the specific, limited purpose of correcting what should have been done in 1839. After the sale of these few tracts of land and the distribution of the proceeds, no authority granted by the Act would continue to exist. The Act of 1878 did not expressly repeal or amend the Act of 1839—as Congress did for the Stockbridge Indian tribe’s comparable act—and it did not revoke the ban on Federal acknowledgment of a Brothertown tribe’s right of “making or executing their own laws” that was stated in the Act of

158 The four named trustees were: Laton Dick Sr., Lucius S. Fowler, David Fowler, and Orrin G. Johnson.
1839. Congress in 1878 did not restore recognition of a Federal relationship with a Brothertown Indian tribe.

Litigation as a result of the Act of 1878 occurred, in State rather than Federal courts,\textsuperscript{159} when the designated trustees sought to sell one of the tracts of unpatented land only to have an individual claim ownership on the grounds that the land had in fact been allotted by the board of commissioners under the Act of 1839. The tract in question was designated on the map, but not on the list, accompanying the board’s report. On appeal to the State Supreme Court, the Court ruled against the trustees by finding that the map was an integral part of the report and constituted an allotment of that land (\textit{Fowler v. Scott} 1885). Because the land in dispute had been assigned by the board of commissioners in 1839, it was not unallotted land in 1878 the designated trustees could sell. It was therefore not necessary for its decision, the State Court said, to decide the question of whether the Act of 1839 eliminated a tribal entity necessary for its members to be beneficiaries of a trust created for them by the Act of 1878. However, the Court offered as \textit{dicta} the opinion that the Act of 1878 created a trust and, at least, restored “tribal functions” sufficient to fulfill the limited purposes of allowing trustees to dispose of the remaining unpatented former tribal lands and members to receive the proceeds as beneficiaries of the trust (\textit{Fowler v. Scott} 1885, 721).

The petitioner argues that the State Court held that a Brothertown Indian tribe continued to exist because the Court suggested its “tribal character” was “sufficiently preserved” to receive monetary benefits (\textit{Fowler v. Scott} 1885, 721; BIN1996, 77-79). The issue under this criterion, however, is not whether an Indian tribe existed but whether a relationship between it and the Federal Government had been terminated or forbidden by congressional act. The State Court did not say that a Federal trust relationship existed in 1885, but rather suggested a tribe was able to receive the benefits of a trust even though Federal recognition of its rights as a tribe to make its own laws had ended. The State Court’s interpretation of the Act of 1878 differed from the explanation of the Act offered by congressional committees and the floor managers of the bill who stated no intent to restore “tribal functions.” The State Court in 1885 did not opine that the congressional Act of 1878 revoked the “cease and determine” language of the Act of 1839 or that the Act of 1878 restored a Federal relationship with a Brothertown Indian tribe that had been ended by the earlier Act.

After the Act of 1878 and the State Court decision of 1885, the Office of Indian Affairs did not change its policy of not dealing with a Brothertown Indian tribe. The annual reports of the Commissioner of Indian Affairs in the years after 1878 did not discuss the Brothertown as an Indian tribe (ARCIA 1878-1883). The sub-agency at Green Bay reported only on the Oneida, Stockbridge, and Menominee as the Indian tribes of eastern Wisconsin. The annual report of 1878 noted the passage of the Act of 1878 (ARCIA 1878, 190), but no evidence in the record shows that the Indian Office sought to administer that Act by supervising the sale of Brothertown lands or the distribution to Brothertown Indians of the proceeds of those sales. Tables in the annual reports summarizing the sale of Indian lands did not include any sales of Brothertown lands (ARCIA 1878-1888). The Commissioner of Indian Affairs in 1879 stated that the Act of 1878 “devolves no duty . . . upon this office” and added that “the Brothertown Indians are

\textsuperscript{159} No evidence in the record indicates the trustees sought to be represented by the Federal Government.
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Criterion 83.7(g)

understood to be citizens of the United States” (Hayt 4/3/1879). Neither the annual reports of the Commissioner nor the agent at Green Bay took any notice of the 1885 court case (ARCIA 1885-1888). The available evidence indicates the Indian Office did not interpret the Act of 1878 as having restored a relationship of the Brothertown Indians with the agency.

Congress did not acknowledge or restore a Federal relationship with a Brothertown Indian tribe for the purpose of receiving a portion of a monetary award made in 1898 by the U.S. Court of Claims in favor of the “New York Indians.” In 1900, Congress appropriated funds to pay “judgments rendered by the Court of Claims” and the Office of Indian Affairs cited that act as its authority for preparing lists of claimants entitled to share in the award (U.S. Congress 2/9/1900; BIA 12/31/1901). In 1901, Congress authorized the Secretary of the Interior to use a portion of the appropriation to pay the expenses necessary to ascertain the beneficiaries of the claims judgment (U.S. Congress 3/3/1901). Neither of these acts provided instructions for determining the recipients of the award or designated payment of the award to tribes. Congress stated no requirement that tribes submit lists of their members or beneficiaries. After the Department of the Interior prepared a roll of the eligible recipients of this claims award, an auditor of the Treasury Department referred to “the individual beneficiaries” of the award (Timme 4/18/1904). In 1906, the Court of Claims ruled that “the causes of action” in the case of the New York Indians were “individual” and that the enrollment of the beneficiaries of the award was of “individuals and not of tribes or nations” (U.S. Court of Claims 6/13/1906).

The petitioner contends that the Government required Indian tribes to submit lists of beneficiaries, and treated the Brothertown in this manner (see BIN 1995, 82; 2005, 6; see also BIN 2008, 1). The evidence in the record does not support this statement. The Commissioner of Indian Affairs replied to an inquiry from E.M. Dick on behalf of a “Business Committee of the Brothertown Indians” by requesting any information Dick and that committee could supply the Department, but did not write to it as an Indian tribe to require it to submit a roll of its members (U.S. Commissioner of Indian Affairs 9/11/1901). Special Agent Guion Miller, who prepared the list of claimants, including a list of Brothertown claimants, stated that he relied upon individual applications and also consulted a list of individuals submitted to the Department by the Brothertown committee (Miller 4/11/1904, as a certification of the list of 12/31/1901). The claims roll prepared by Miller for the Department included more than twice as many individuals as the roll submitted by the Business Committee. The “direction” that Miller said the Commissioner provided the committee consisted of advice on how to prepare a roll the committee volunteered to present to the Department; it did not take the form of an order to a federally recognized Indian tribe requiring it to submit its membership list.

During the 20th century, some scholarly publications expressed an opinion that the Brothertown Indians had lost their Federal relationship with the United States as an Indian tribe. Other publications indicated their understanding the Brothertown were not acknowledged as an Indian tribe by failing to include them in a discussion of the contemporary Indian tribes of Wisconsin (e.g., Kirsch 1931; Wisconsin 1952, 1966; Lurie 1969, 1980; W. Hodge 1975). In 1907, the

160 A pair of circa 1915 payment rolls listed the per capita share of the award due each of the 570 claimants on Miller’s 1901 roll (BIA 1915). The roll submitted by the Business Committee contained 209 names (Brothertown Business Committee c. 11/30/1901; T. Dick et al. 12/2/1901).
Smithsonian Institution’s *Handbook of American Indians North of Mexico* concluded that the historical “Brotherton” band had “abandoned their tribal relations and became citizens” (F. Hodge 1907, 166). In his two-volume history of American Indian policy published in 1984, historian Francis Paul Prucha referred to the Act of 1839, although incorrectly conflating it with the Stockbridge Act of 1843, and stated that the “Brotherton” Indians “accepted the legislation and ended their federal status” (Prucha 1984, 266). In 2001, a sympathetic portrait of the Brothertown which treated them as a contemporary Indian tribe also listed their “tribal status” as “terminated” in 1839 (Loew 2001, 113). A recent scholarly history of the Stockbridge Indians referred to the Act of 1839 as having “dissolved” the Brothertown Indian tribe (Oberly 2005, 63-64).

**Prior Opinions of the Office of the Solicitor on Whether the Brothertown Were “Terminated”**

The Office of the Solicitor of the Department of the Interior prepared letters, in 1990 and 1993, that considered the question of whether or not a group of Brothertown Indians could petition for Federal acknowledgment as an Indian tribe. These letters concluded that a Brothertown group could petition, but implied that a group’s right to petition depended upon a preliminary determination that the group had not been “terminated.” The acknowledgment regulations do not so limit the right to petition (§83.4(a)). The regulations do not prevent groups that were terminated or forbidden a Federal relationship from petitioning for Federal acknowledgment, but from being acknowledged through the administrative process (§83.3(e)). The requirements of criterion 83.7(g) serve this purpose. Nevertheless, attorneys in the Solicitor’s Office made a preliminary determination that the Brothertown Indian tribe had not been terminated and thus concluded that a Brothertown group was able to petition for Federal acknowledgment. A finding of whether or not a petitioning group meets the requirements of this criterion is properly made by the Assistant Secretary of Indian Affairs under the acknowledgment regulations.

In 1990, the Office of the Field Solicitor in Minnesota provided advice to the Area Director of the Bureau of Indian Affairs in Minneapolis in response to an inquiry about the appropriate course for Brothertown Indians to follow in seeking Federal acknowledgment. An attorney in the Field Solicitor’s office identified the “real issue” as whether a Brothertown group was “precluded from seeking federal recognition through the federal acknowledgment process” (Kimball 8/28/1990). She identified the potential problem as the language in the Act of 1839 stating that the Brothertown Indian tribe’s “power of making or executing their own laws . . . shall cease,” and asked whether that Act should be viewed as “termination” legislation. She argued that the Act of 1839 “can hardly be viewed in the same light as the termination acts of the 1950’s” and concluded that, although the “political status of the Brothertowns changed” after the Act of 1839, “that change should not be termed termination.” The Field Solicitor’s office thus advised the Bureau that a Brothertown group was not precluded from using the Federal acknowledgment process and submitting an acknowledgment petition.

In 1993, the Acting Associate Solicitor for the Division of Indian Affairs advised the Assistant Secretary of Indian Affairs about the legal status of the Brothertown Indians of Wisconsin in response to an inquiry about that question. The Associate Solicitor identified the issue as the validity of a request by a Brothertown group that they were “entitled to immediate recognition” as an Indian tribe (Etheridge 8/19/1993). He concluded that the fact that a historical Brothertown
Indian tribe was recognized as an Indian tribe by the United States in a number of treaties did not “entitle those claiming to be the tribe’s successor to tribal status.” The Associate Solicitor went on to answer other questions about whether the Brothertown Indian tribe was “terminated” or could be acknowledged by the Department of the Interior. He said he found “no reason to disagree” with the Field Solicitor’s earlier conclusion that the Act of 1839 “did not constitute termination” of the Brothertown Indian tribe, but he did not provide any new analysis to support this conclusion. Because of this belief that the Brothertown Indian tribe “was not terminated,” the Associate Solicitor concluded that “the group calling themselves the Brothertown Indians is eligible to petition” the Department for Federal acknowledgment as an Indian tribe.

To ask whether or not a Federal statute represents “termination” of an Indian tribe is to interpret criterion 83.7(g) of the acknowledgment regulations too narrowly, for the criterion refers to congressional legislation that has expressly “terminated or forbidden” the Federal relationship. The attorney in the Field Solicitor’s office noted that the Act of 1839 did not use the same language as the “termination” legislation of the 1950s, but also suggested that was not a proper comparison. This criterion should not be interpreted as requiring the use of modern terminology in historical acts. The attorney in the Field Solicitor’s office did not offer an explicit comparison of the Act of 1839 and legislation of the 1950s to demonstrate differences between them. The Act of 1839 shared two key features with “termination” acts: both ended a tribe’s relationship with the United States and distributed tribal assets. The attorney in the Field Solicitor’s office applied a standard—an “express” statutory language or “clear expression” standard—that differs from the “reasonable likelihood of the validity of the facts” standard of the acknowledgment regulations. The review here of the Act of 1839 shows that it did contain “clear” and “express” language. Applying the regulatory standard, the 19th century language of the Act of 1839 stated the intent of Congress to end Federal recognition of a government-to-government relationship with the Brothertown Indian tribe.

The issue under criterion 83.7(g) is not whether Congress applied 20th century termination policy to a 19th century Indian tribe, but whether it ever acted to end or forbid a Federal relationship with an Indian tribe. Congress both ended an existing Federal relationship with the Brothertown Indian tribe of Wisconsin and forbade a Federal relationship with it in the future by stating in the Act of 1839 that the Brothertown Indian tribe’s “rights as a tribe . . . shall cease and determine.” The Federal relationship is a government-to-government relationship between the Federal Government and a tribal political entity. An Act of Congress that states an Indian tribe will not be recognized as having a right or “power of making or executing their own laws . . . as such tribe” prevents the Federal Government from recognizing a right of that Indian tribe to act as a tribal political entity and thus precludes a government-to-government relationship with that Indian tribe. For these reasons, the Act of 1839 forbids a Federal relationship with the Brothertown Indian tribe of Wisconsin or a petitioning group claiming to be its successor. When the acknowledgment regulations were published in 1978, the preamble stated the principle that “the Department cannot administratively reverse legislation enacted by Congress” (43 F.R. 39361).
Conclusion

The BIN petitioner does not meet the requirements of criterion 83.7(g). Congress stated in the Act of 1839 that the Brothertown Indian tribe’s “rights as a tribe” recognized by the Federal Government, and specifically its power to act as a political and governmental entity, would “cease and determine,” that is, end and be limited permanently. The acknowledgment regulations provide in this criterion that a petitioner whose Federal relationship has been terminated or forbidden cannot be acknowledged. Congress in the Act of 1839 brought Federal recognition of the relationship with the Brothertown Indian tribe of Wisconsin to an end. By expressly denying the Brothertown of Wisconsin any Federal recognition of a right to act as a tribal political entity, Congress has forbidden the Federal Government from acknowledging the Brothertown as a government and from having a government-to-government relationship with the Brothertown as an Indian tribe. The Act of 1839, by its “cease and determine” language, has both expressly ended and forbidden the Federal relationship for this petitioner. Therefore, the petitioner does not meet the requirements of criterion 83.7(g).
Appendix A

“First Homes of New England Indians at Brothertown, Wisconsin,” by Heller, 1936

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## Brothertown Indian Nation (Petitioner #67) Proposed Finding
Appendix A: Heller, First Homes at Brothertown

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### Notes:
1. This numbering system does not appear on Heller’s map; these artificial map coordinates are provided here for ease in locating lots.

- [N] Number of lots north of Fond du Lac County
- [E] Number of lots east of Lake Winnebago
- Sto. Stockbridge Reservation

### Source:
## Appendix B

### 1839 Allotment List and 1845 Amendatory Reports

<table>
<thead>
<tr>
<th>Name [(maiden) m. spouse]</th>
<th>[b.]</th>
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1. [maiden] m. spouse
2. [b.]
3. Case #
4. Lot
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## Name [(maiden) m. spouse] ¹

<table>
<thead>
<tr>
<th>Name [(maiden) m. spouse] ¹</th>
<th>[b.] ²</th>
<th>Case # ³</th>
<th>Lot ⁴</th>
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<tr>
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</table>

### Notes:

1. These individuals are listed as named on the 1839 allotment list, except that variant spellings of surnames are listed for everyone with that surname; information in brackets represents annotations by OFA researchers to help identify individuals on the list.

2. The 1839 allotment list does not include an individual’s date of birth; the date of birth given here is found in the petitioner’s genealogical database or estimated from an age given on a Federal census or censuses.

3. The original 1839 allotment list did not number individual allotments; penciled numbers were added to the list and referred to by the General Land Office as case numbers.

4. Some individuals were allotted land in more than one lot; individuals with an additional fraction(s) of another lot(s) are marked with the “+” symbol.

a. This name or other information was clarified in the amendatory report of 4/2/1845.

m. This name or other information was clarified on the allotment map of 7/13/1840.

v. The name on the allotment list of 1839 and the map of 1840 do not agree; in each case, the list appears to be correct.

* There are alternative choices for this allottee; the birth date of the more likely allottee is given first.

†1. This individual was identified in the amendatory report of 4/2/1845 (but not patented; see report of 7/10/1845); the fractional lots claimed for her were shown on the map as assigned to David Johnson.

†2. This allottee was changed (John Kiness to John Coyhis Sr.) in the amendatory report of 4/2/1845 and the change was further explained in the amendatory report of 7/10/1845.
†3 This individual was identified in the amendatory report of 7/10/1845, and on the map of 1840 as the “wife of” Solomon Paul (see Fowler v. Scott).
†4 This individual was identified on the map of 1840 only as the “wife of” Nathan Dick.
‡ This individual is not found in the petitioner’s genealogical database and was not found on a Federal census.

Note: The report of 1839, amendatory reports of 1845, and map of 1840 identify 387 member allottees at the time of the allotment. The commissioners made 390 allotments in their 1839 report, but 5 appear to represent a second assignment made to one individual and 1 was made to unnamed children (#382), which reduces the total to 384 identified allottees, while the map identified 2 wives not listed in the 1839 report and an 1845 report identified 1 additional wife, which increases the total to 387 allottees identified by the commissioners.

### Appendix C

1840 Census: Calumet County

<table>
<thead>
<tr>
<th>1840 [Dwelling#]</th>
<th>1840 Population</th>
<th>1840 Head of Family</th>
<th>1840 Age</th>
<th>[1839 Case #]</th>
<th>[1840 / 1839 Spouse? / #]</th>
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<tr>
<td>1</td>
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<tr>
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<td>Fowler, Elizabeth</td>
<td>40s</td>
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<tr>
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<td>30s?</td>
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<td>Head of Family</td>
<td>Age</td>
<td>[1839 Case #]</td>
<td>[1840 / 1839 #]</td>
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<td>-----</td>
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Brothertown Indian Nation (Petitioner #67) Proposed Finding
Appendix C: 1840 Census

<table>
<thead>
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<th>1840 [Dwelling#]</th>
<th>1840 Population</th>
<th>1840 Head of Family</th>
<th>1840 Age</th>
<th>[1839 Case #]</th>
<th>[1840 / 1839 Spouse? / #]</th>
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<td></td>
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<tr>
<td>68</td>
<td>275 [273]</td>
<td>TOTAL</td>
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</table>

Notes:
1. The 1840 Federal census does not include information about the 1839 allotment list; that information is provided from other sources to identify the Brothertown allottees on the census.
2. The 1840 Federal census does not identify any members of the household except the household head; the likely presence of a spouse is deduced from information on the census about the gender and age of other members of the household.
   †1 This individual was identified in the amendatory report of 4/2/1845 (but not patented; see report of 7/10/1845); the fractional lots claimed for her were shown on the map as assigned to David Johnson.
   †3 This individual was identified in the amendatory report of 7/10/1845, and on the map of 1840 as the “wife of” Solomon Paul (see Fowler v. Scott).
   †4 This individual was identified on the map of 1840 only as the “wife of” Nathan Dick.
40.a This spouse was the child of allottee #40.

Sources: U.S. Census 1840, Wisconsin, Calumet County. The additional information about allotment case numbers and the likely presence of a spouse in the household is derived from: Anthony et al. 10/-/1839 and 7/10/1845; Commuck et al. 4/2/1845; Featherstonhaugh 7/13/1840; and the petitioner’s genealogical database.
### Appendix D

**1850 Census**

1850 Census: 1839 Allottees and their Children born before 1839

<table>
<thead>
<tr>
<th>Dwelling #</th>
<th>Name [(maiden) m. spouse]</th>
<th>Case #</th>
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</thead>
<tbody>
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<td>Dist.36, 001</td>
<td>Dick, Daniel</td>
<td>1796</td>
</tr>
<tr>
<td>Dist.36, 001</td>
<td>Dick, Jerusha [(Wauby) m. Daniel]</td>
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<td>Dick, John W.</td>
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<td>Tocus, Joseph</td>
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<td>Abner, Randal Sr.</td>
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<td>Dist.36, 004</td>
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<td>1819</td>
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</tr>
<tr>
<td>Dist.36, 004</td>
<td>Abner, Josephine</td>
<td>1836</td>
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### 1850 Census

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<td>Brushel, Nancy J. [(Welch) m. Henry]</td>
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<td>Brushel, Henry</td>
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<td>Coyhis, John Jr. [John R.]</td>
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<td>Sampson, Sophia [Elizabeth] [m. Baldwin/Coyhis]</td>
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<td>Paul, Sarah</td>
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<td>? #105?</td>
<td>Dick, Margarett Ann</td>
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<td>Dick, Thomas Jr.</td>
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<td>Dick, Ellen</td>
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<tr>
<td>Dwelling #</td>
<td>Name [(maiden) m. spouse]</td>
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### 1850 Census

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Notes:
1. The information in brackets represents annotations by OFA researchers to help identify individuals on the census.
2. The date of birth given here is not given on the Federal census; it is found in the petitioner’s genealogical database or estimated from an age given on a Federal census or censuses.
3. The 1850 Federal census does not include information about the 1839 allotment list; that information is provided from other sources to identify the Brothertown allottees on the census.

- * This name or other information was clarified in the amendatory report of 4/2/1845.
- † This individual is possibly allottee #203, rather than Orrin Johnson b.1822.
- ‡ This individual was identified in the amendatory report of 4/2/1845 but not patented; see report of 7/10/1845; the fractional lots claimed for her were shown on the map as assigned to David Johnson.
- ‡ This allottee was changed (John Kiness to John Coyhis Sr.) in the amendatory report of 4/2/1845 and the change was further explained in the amendatory report of 7/10/1845.
- ‡ This individual was identified on the map of 1840 only as the “wife of” Nathan Dick.
- ‡ This individual is not found in the petitioner’s genealogical database or a Federal census (“b.” column).
- 30.a This individual is a child of allottee #30.

Appendix - 29
### Appendix E

**1860 Census: 1839 Allottees and their Adult Children**

<table>
<thead>
<tr>
<th>Dwelling #</th>
<th>Name [(maiden) m. spouse]</th>
<th>[b.]</th>
<th>1839 Case #</th>
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<td>Brothertown 005</td>
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<td>Johnson, Lewis</td>
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### 1860 Census

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<th>1839 Case #</th>
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## 1860 Census

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<td>Walker, Jane</td>
<td>‡</td>
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<td>Warkieth, Lucy</td>
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<td>Wauby, Lureanet</td>
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<td>Welch, Catherine [m. Joseph M. Johnson]</td>
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<td>Welch, Harriet [m. Denny/Pemberton]</td>
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<td>Not in Brothertown Twsp.</td>
<td>Wiggins, Maria [m. Almarion DeGroat]</td>
<td>1841</td>
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<td>Wiggins, Polly</td>
<td>1836</td>
<td>347</td>
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<td>Wyatt, Daniel Sr.</td>
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<td>Not in Brothertown Twsp.</td>
<td>Wyatt, Romantha [Romance?]</td>
<td>1826</td>
<td>360</td>
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Brothertown Indian Nation (Petitioner #67) Proposed Finding  
Appendix E: 1860 Census

<table>
<thead>
<tr>
<th>1860 Census</th>
<th>Name [(maiden) m. spouse]</th>
<th>[b.] ²</th>
<th>1839 Case # ³</th>
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<td>Dwelling #</td>
<td>Wyatt, Sarah [m. John Quinney]</td>
<td>1794?</td>
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<tr>
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<td>Wyatt, Zephania</td>
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</tbody>
</table>

Notes:

1. The information in brackets represents annotations by OFA researchers to help identify individuals on the census.
2. The date of birth given here is not given on the Federal census; it is found in the petitioner’s genealogical database or estimated from an age given on a Federal census or censuses.
3. The 1860 Federal census does not include information about the 1839 allotment list; that information is provided from other sources to identify the Brothertown allottees on the census.
   a. This name or other information was clarified in the amendatory report of 4/2/1845.
   m. This name or other information was clarified on the allotment map of 7/13/1840.
   * This individual is possibly allottee #203, rather than Orrin Johnson b.1822.
   † 2 This allottee was changed (John Kiness to John Coyhis Sr.) in the amendatory report of 4/2/1845 and the change was further explained in the amendatory report of 7/10/1845.
   † 4 This individual was identified on the map of 1840 only as the “wife of” Nathan Dick.
   ‡ This individual is not found in the petitioner’s genealogical database (“b.” column).

30.a This individual is a child of allottee #30.

### Appendix F

**1870 Census: 1839 Allottees and their Adult Children**

<table>
<thead>
<tr>
<th>Dwelling #</th>
<th>Name ([maiden] m. spouse)</th>
<th>Case #</th>
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<tbody>
<tr>
<td>Brothertown 061</td>
<td>Coyhis, Julia Ann [m. George Baker]</td>
<td>1845 190.b</td>
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<tr>
<td>Brothertown 062</td>
<td>Dick, Laura [m. Benjamin Coyhis]</td>
<td>1817 75</td>
</tr>
<tr>
<td>Brothertown 062</td>
<td>Coyhis, Benjamin</td>
<td>1818 190</td>
</tr>
<tr>
<td>Brothertown 062</td>
<td>Kiness/Kindness, Lewis</td>
<td>1838 154</td>
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<tr>
<td>Brothertown 097</td>
<td>Shelley, Henry</td>
<td>1834 192</td>
</tr>
<tr>
<td>Brothertown 117</td>
<td>Adams, Rebecca [(Abner) m. Simeon] [m. John Johnson Jr.]</td>
<td>1816 380</td>
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<td>Brothertown 117</td>
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<td>1818 228</td>
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<tr>
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<td>Brothertown 133</td>
<td>Shelley, Simeon</td>
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<td>Brothertown 138</td>
<td>Hammer, Alexander Hamilton</td>
<td>1830 387.a</td>
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<td>Brothertown 138</td>
<td>Fowler, Angeline [m. Alexander Hammer]</td>
<td>1840 24.b</td>
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<td>Hammer, Irene [m. Groff/Bulman]</td>
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<td>Hammer, John E.</td>
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<td>Coyhis, Mary [m. John Simons]</td>
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<td>Simons, Betsy L./Elizabeth</td>
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<td>Simons, Isaac</td>
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<td>Name [(maiden) m. spouse]</td>
<td>Case #</td>
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<td>Fowler, Abba L. [m. Edgar Dick]</td>
<td>1843</td>
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<td>Niles, Nabby [Abigail] [Johnson] m. James</td>
<td>1805</td>
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<td>Niles, Phebe [m. Wauby/Fowler]</td>
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<td>Niles, Solomon</td>
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<td>Niles, John</td>
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<td>Fowler, Harriet Adelaide [m. John Niles]</td>
<td>1840/44</td>
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<td>Dwelling with an “Indian” resident</td>
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<td>Fowler, Lyman [P.]</td>
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<td>Dick, Orrey [Aurilla] [m. Lyman Fowler]</td>
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<td>Fowler, Almira</td>
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<td>Commuck, Alice E. [m. Rudolphus Fowler]</td>
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<td>Fowler, Lovina/Lavinia [m. James Dayton]</td>
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<td>Skeesuck, Ruth [m. Orrin Fowler]</td>
<td>1831</td>
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<td>Fowler, Harriet Permelia [m. Joel Sampson]</td>
<td>1849</td>
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<td>Brothertown 254</td>
<td>Wauby, Sarah [m. Dick/McGee]</td>
<td>1838</td>
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<td>Brothertown 255</td>
<td>Bulman, Grisel/Griswold</td>
<td>1842</td>
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<td>Bulman, Amelia E./Emilie</td>
<td>1845</td>
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<td>Dick, Mary Jane/Mary R. [m. Grisel Bulman]</td>
<td>1847</td>
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<td>Bulman, Clinton</td>
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<td>Bulman, Susan</td>
<td>1852</td>
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<td>Brothertown 256</td>
<td>Sampson, Maria [Mariah] [m. Mathers/Wauby]</td>
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<td>Mathers, Arsula E./Ursula [m. Henry C. Fowler]</td>
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<td>Mathers, Rebecca [m. John Simons]</td>
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<td>Brothertown 259</td>
<td>Fowler, Elizabeth [(Simons)] m. David</td>
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<td>Hammer, Louisa</td>
<td>1836</td>
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<td>Fowler, Mary L. [Mary Victory?] [Johnson?] m. Lorenzo?</td>
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<td>Name [(maiden) m. spouse]</td>
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<td>Brothertown 270</td>
<td>Dick, John Sr.</td>
<td>1808</td>
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<td>Dick, Hannah [(Hammer)] m. J[ohn] Elkany</td>
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<td>Dick, Dorcas</td>
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<td>Paul, Solomon</td>
<td>1796</td>
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<td>Palmer, Martha [(Waukeet) wid.] m. Solomon Paul</td>
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<td>Brothertown 278</td>
<td>Dwelling with an “Indian” resident</td>
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<td>1824</td>
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<td>Brothertown 283</td>
<td>Fowler, Collins [John Collins]</td>
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<td>Fowler, Roxana</td>
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<td>Johnson, Loren</td>
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<td>Fowler, Permelia Jane m. Loren Johnson</td>
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<td>Brothertown 296</td>
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<td>Fowler, Amy L./Annie</td>
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<td>Charlestown xxx</td>
<td>Shelley, Lewis A.</td>
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<td>Johnson, Orra M. m. Jacob Moore</td>
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<td>Name [(maiden) m. spouse]</td>
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<td>Brushel, Hannah ([Cujepe] m. Thomas)</td>
<td>1785</td>
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<td>Cesar/Caesar/Cochegan, Lucy</td>
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<td>Cocheats, G. W. ‡</td>
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<td>Cocheats, Hannah [m. Eli Williams]</td>
<td>1834</td>
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<td>Cocheats, Sophona [Sophronia] [Crosley] m. Charles</td>
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<td>Cocheats, Susanna ‡</td>
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<td>Commuck, Helen/Ellen</td>
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<td>Commuck, Sarah</td>
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<td>1835</td>
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<td>Dwelling #</td>
<td>Name [(maiden) m. spouse]</td>
<td>[b.]</td>
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<td>Crosley, Jason L.</td>
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<td>Dwelling #</td>
<td>Name [(maiden) m. spouse]</td>
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<td>Dick, Margaret</td>
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<td>Dick, Margarett Ann</td>
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<td>Dick, Nathan [Nathaniel?]</td>
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<td>Waub, Silas</td>
<td>1800c</td>
</tr>
<tr>
<td></td>
<td>Welch, Catherine [m. Joseph M. Johnson]</td>
<td>1839</td>
</tr>
<tr>
<td>Dwelling #</td>
<td>Name [(maiden) m. spouse]</td>
<td>[b.]</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------------------</td>
<td>------</td>
</tr>
<tr>
<td>1</td>
<td>Welch, Esther A.</td>
<td>1841</td>
</tr>
<tr>
<td>2</td>
<td>Welch, Orpha Jane [m. Louis Pendleton]</td>
<td>1848</td>
</tr>
<tr>
<td>3</td>
<td>Welch, Rosella/Rose [m. William Davis]</td>
<td>1849</td>
</tr>
<tr>
<td>4</td>
<td>Welch, Rosetta</td>
<td>1837</td>
</tr>
<tr>
<td>5</td>
<td>Welch, Sabrina [m. Baptiste Smith]</td>
<td>1837</td>
</tr>
<tr>
<td>6</td>
<td>Whitney, Joseph</td>
<td>♦</td>
</tr>
<tr>
<td>7</td>
<td>Wiggins, Abbie L. [m. Elisha Schooner]</td>
<td>1843</td>
</tr>
<tr>
<td>8</td>
<td>Wiggins, Anna</td>
<td>♦</td>
</tr>
<tr>
<td>9</td>
<td>Wiggins, Betsy [(Handable)] (wid.)</td>
<td>1782</td>
</tr>
<tr>
<td>10</td>
<td>Wiggins, Charles</td>
<td>1828c</td>
</tr>
<tr>
<td>11</td>
<td>Wiggins, Emily C. [m. Job Bowman]</td>
<td>1845</td>
</tr>
<tr>
<td>12</td>
<td>Wiggins, Ethan</td>
<td>1852</td>
</tr>
<tr>
<td>13</td>
<td>Wiggins, Hiram</td>
<td>n.d.</td>
</tr>
<tr>
<td>14</td>
<td>Wiggins, Ira L. [Ira S.]</td>
<td>1832</td>
</tr>
<tr>
<td>15</td>
<td>Wiggins, James</td>
<td>1848</td>
</tr>
<tr>
<td>16</td>
<td>Wiggins, James</td>
<td>n.d.</td>
</tr>
<tr>
<td>17</td>
<td>Wiggins, Jesse</td>
<td>1839</td>
</tr>
<tr>
<td>18</td>
<td>Wiggins, Maria [m. Almarion DeGroat]</td>
<td>1841</td>
</tr>
<tr>
<td>19</td>
<td>Wiggins, Polly</td>
<td>1836</td>
</tr>
<tr>
<td>20</td>
<td>Wiggins, Ramona</td>
<td>1834</td>
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<tr>
<td>21</td>
<td>Wiggins, Sampson</td>
<td>1851</td>
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<tr>
<td>22</td>
<td>Wiggins, Seth</td>
<td>n.d.</td>
</tr>
<tr>
<td>23</td>
<td>Wyatt, Daniel</td>
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<td>24</td>
<td>Wyatt, Daniel Sr.</td>
<td>1800c</td>
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<td>25</td>
<td>Wyatt, Romantha [Romance?]</td>
<td>1826</td>
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<tr>
<td>26</td>
<td>Wyatt, Zephania</td>
<td>♦</td>
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Notes:
1. The information in brackets represents annotations by OFA researchers to help identify individuals on the census.
2. The date of birth given here is not given on the Federal census; it is found in the petitioner’s genealogical database or estimated from an age given on a Federal census or censuses.
3. The 1870 Federal census does not include information about the 1839 allotment list; that information is provided from other sources to identify the Brothertown allottees on the census.
   a. This name or other information was clarified in the amendatory report of 4/2/1845.
   m. This name or other information was clarified on the allotment map of 7/13/1840.
   * This individual is possibly allottee #203, rather than Orrin Johnson b.1822.
   †2 This allottee was changed (John Kiness to John Coyhis Sr.) in the amendatory report of 4/2/1845 and the change was further explained in the amendatory report of 7/10/1845.
   †4 This individual was identified on the map of 1840 only as the “wife of” Nathan Dick.
   ‡ This individual is not found in the petitioner’s genealogical database.
   30.a This individual is a child of allottee #30.

Sources: U.S. Census 1870, Wisconsin, Calumet County, Brothertown Township. The additional information about 1839 allottees and allotment case numbers is derived from: Charles Anthony et al. to President Van Buren, n.d.
Brothertown Indian Nation (Petitioner #67) Proposed Finding
Appendix F: 1870 Census

## Appendix G

### 1875 State Census: Brothertown Township

<table>
<thead>
<tr>
<th>1875 year</th>
<th>line</th>
<th>Head of Family (rolls)</th>
<th>m. spouse (rolls)</th>
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<tbody>
<tr>
<td>1875</td>
<td>1</td>
<td>B[enjamin] J. Coys [Coyhis?] [(1839#) m. Laura Ann Dick (1839#)]</td>
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<tr>
<td>1875</td>
<td>2</td>
<td>O[rlando] D. Dick [m. Almira J. Sampson (1901#)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>3</td>
<td>J[ohn] C. Fowler [m. Phoebe Niles (1839#)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>4</td>
<td>Peter E. Rhodes [non-Indian ancestor?]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>5</td>
<td>Eliza Dick</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>6</td>
<td>Benjamin Welch [b.1816/1851?]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>7</td>
<td>W[illiam] H. Dick [(1839#?) m. Juliette Peters (1839#)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>8</td>
<td>Grisel Bullman [(1901#) m. Mary Jane Dick]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>9</td>
<td>John Niles [(1839#) m. Harriet A. Fowler (1901#)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>10</td>
<td>O[rin] O. Johnson [(1839#?)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>11</td>
<td>G[race?] C. Dick [(b.1834)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>12</td>
<td>Daniel [L.] Jacques [(1901#) m. Grace Dick (b.1853) (1901#)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>13</td>
<td>John [W.] Dick [(1839#) m. Patience L. Fowler]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>14</td>
<td>E[lisha] M.[N.?] Schooner [m. Abbie L. Wiggins (1901#)]</td>
<td></td>
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<tr>
<td>1875</td>
<td>15</td>
<td>E[dwin] C. Adams [(1839#) m. Elizabeth Shelley [d.] (1839#)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>16</td>
<td>David S[c]helly [(1839#/1901#)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>17</td>
<td>Oskar [Oscar] Johnson [(1901#) m. Ellen J. Dick]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>18</td>
<td>Melvill[e] Johnson [(1901#)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>19</td>
<td>Rufus [J.] Coyhis [(1901#)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>20</td>
<td>Geo[rge] [H.] Baker [m. Julia A. Coyhis (1901#)]</td>
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</tr>
<tr>
<td>1875</td>
<td>21</td>
<td>S[amuel] Brushel [(1839#)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>22</td>
<td>C[lark] D. Sampson [(1839#) m. Rozina Mathers [d.] (1839#?)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>23</td>
<td>J[ohn] C. Hammer [(1839#)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>24</td>
<td>John Shelly [(1839#/1901#)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>25</td>
<td>Henry Shelly [(1839#/1901#)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>26</td>
<td>Simon [H.] Shelly</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>27</td>
<td>H[enry] Potter [(1839#)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>28</td>
<td>J[ames] D. Fowler</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>29</td>
<td>D[avid] J. Boyer [non-Indian ancestor?]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>30</td>
<td>Henry Davids [m. Alvira Shelley (1901#)]</td>
<td></td>
</tr>
<tr>
<td>1875</td>
<td>31</td>
<td>John Simonds [Simons] [m. Mary A. Coyhis (1839#)]</td>
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<tr>
<td>1875</td>
<td>32</td>
<td>H[olll] R. Crowell [(1901#) m. Frances A. Wauby (1901#)]</td>
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<tr>
<td>1875</td>
<td>33</td>
<td>L[orenzo] D. Fowler [(1839#) m. Mary V. Johnson (1839#?)]</td>
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<tr>
<td>1875</td>
<td>34</td>
<td>Elias J. Dick [(1839#/1901#) m. Serepta Crosley]</td>
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</table>
### 1875 State Census, Brothertown Township

<table>
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<tr>
<th>1875 [p.]</th>
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<th>Head of Family (rolls)</th>
<th>m. spouse (rolls)</th>
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<td>11</td>
<td>Horace Welch</td>
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</tr>
<tr>
<td>6</td>
<td>13</td>
<td>David Fowler [(1839#) m. Elizabeth Simons]</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>14</td>
<td>L[yman] P. Fowler [(1839#) m. Aurilla “Orrey” Dick (1839#)]</td>
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<tr>
<td>6</td>
<td>16</td>
<td>[B]enjamin F.[G.?] Fowler [(1839#?) m. Hannah Shelley (1839#)]</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>17</td>
<td>Arnold Skeesuck [(1839#)]</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>18</td>
<td>Sidney Welch [m. Frances E. Fowler (1901#)]</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>19</td>
<td>Andrew Niles [(1839#/1901#) m. Fanny A. Fowler [d.] (1839#)]</td>
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</tr>
<tr>
<td>6</td>
<td>20</td>
<td>E[dgar] M. Dick [(1901#) m. Abba L. Fowler]</td>
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<tr>
<td>6</td>
<td>21</td>
<td>John Mathe[r]s[?] [(1839#)]</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>24</td>
<td>William Welch, Jr. [b.1836?] [(1901#) m. Emeline Fowler [d.]]</td>
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</tr>
<tr>
<td>7</td>
<td>29</td>
<td>Lewis Johnson [b.1841?]</td>
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</tr>
<tr>
<td>7</td>
<td>30</td>
<td>J[oe]l J. Sampson [(1901#) m. Harriet P. Fowler (1901#)]</td>
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<tr>
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<td>31</td>
<td>J[ohn] W. Wiggins [(1901#)]</td>
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</tr>
<tr>
<td>7</td>
<td>32</td>
<td>David Wiggins [(1839#) m. Louisa Hammer]</td>
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<td>9</td>
<td>1</td>
<td>Rufus Skeesuck [(1839#/1901#) m. Amanda M. Fowler]</td>
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</tr>
<tr>
<td>9</td>
<td>2</td>
<td>L[ucius] S. Fowler [(1839#) m. Phoebe Fowler (1839#)]</td>
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<tr>
<td>9</td>
<td>12</td>
<td>William [H.] Shapely [m. Phoebe J. Johnson (1839#/1901#)]</td>
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</tr>
<tr>
<td>9</td>
<td>13</td>
<td>Fred[erick] Baker [non-Indian ancestor?]</td>
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</tr>
<tr>
<td>9</td>
<td>14</td>
<td>Samuel Skeesuck [Jr.] [(1839#) m. Grace Seketer]</td>
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</tr>
<tr>
<td>9</td>
<td>15</td>
<td>Alexander Pemberton [non-Indian ancestor]</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>17</td>
<td>Peter Amel [Sr.?] [non-Indian ancestor?]</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>18</td>
<td>O[f]rin G. Johnson [(1839#?) m. Wealthy J. Fowler [d.] (1839#)]</td>
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<tr>
<td>9</td>
<td>19</td>
<td>William Johnson [6 ancestors] [(1839# or 1901#)] [m. Charlotte Wiggins (1839#?)]</td>
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</tr>
<tr>
<td>9</td>
<td>20</td>
<td>John [Jonathan] Schooner</td>
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</tr>
<tr>
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<td>27</td>
<td>Orvill[e] A. Hart [(1839#) m. Minerva N. Dick]</td>
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<td>28</td>
<td>Alex[ander] Fowler [(1839#) m. Harriet Dick]</td>
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<tr>
<td>9</td>
<td>31</td>
<td>Mary [Ann?] Jones</td>
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<tr>
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<td>33</td>
<td>H[enry] E. Fowler [(1901#) m. Emily A. Sampson (1901#)]</td>
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<tr>
<td>10</td>
<td>15</td>
<td>William Welch, Sen. [b.1810?] [m. Rachel Scippio [d.]]</td>
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</table>

Notes:
1. The 1875 census does not identify any members of the household except the household head; information in brackets represents annotations by OFA researchers to help identify individuals on the census.

Note: The census of Brothertown Township included 315 households on ten unnumbered pages.

## Appendix H
**1893 Plat Map of Calumet County**

<table>
<thead>
<tr>
<th>Township</th>
<th>Lot #</th>
<th>Name</th>
<th>1839 List</th>
<th>1901 Roll</th>
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<td>Brothertown</td>
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<td>Hannah Dick [m. Fowler?]</td>
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<td>Brothertown</td>
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<td>H[enry] E. Fowler</td>
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<td>Brothertown</td>
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<td>Emily A. [(Sampson)] Fowler</td>
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<td>Brothertown</td>
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<td>? J.C. Hammer</td>
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<td>Brothertown</td>
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<td>? E.M.D. [E.M. Dick?]</td>
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<td>Brothertown</td>
<td>Village/23</td>
<td>L[yman] P. Fowler</td>
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<td>Brothertown</td>
<td>Village/23</td>
<td>Est[h]er Hamer [m. Johnson?]</td>
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<td>Brothertown</td>
<td>Village/23</td>
<td>Abbie [(Hart)] Welch</td>
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<td>B[enjamin] G. Fowler</td>
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<td>? J[ohn] C. Fowler</td>
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<td>Brothertown</td>
<td>28</td>
<td>? Charles Welch [6 ancestors]</td>
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<td>30</td>
<td>J[ohn] Mathers (heirs)</td>
<td>35/309</td>
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<td>Brothertown</td>
<td>35</td>
<td>David Fowler (heirs)</td>
<td>30/[352]</td>
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<td>Brothertown</td>
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<td>R[becca] Johnson</td>
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<td>A[lexander] Pemberton</td>
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<td>? C.B. Kindness</td>
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<td>G.H. Baker [Sr.] *</td>
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<td>Brothertown</td>
<td>174</td>
<td>G.H. Baker [Sr.] *</td>
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<td>Brothertown</td>
<td>199</td>
<td>B[enjamin] J. Coyhis</td>
<td>190</td>
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<td>Stockbridge</td>
<td>180</td>
<td>? John Johnson [Jr.] *</td>
<td>228?</td>
<td></td>
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<td>Stockbridge</td>
<td>187</td>
<td>? John Johnson [Jr.] *</td>
<td>228?</td>
<td></td>
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<tr>
<td>Stockbridge</td>
<td>226</td>
<td>? John Johnson [Jr.] *</td>
<td>228?</td>
<td></td>
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</tbody>
</table>
Brothertown Indian Nation (Petitioner #67) Proposed Finding  
Appendix H: 1893 Plat Map of Calumet County

<table>
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<tr>
<th>Township</th>
<th>Lot #</th>
<th>Name</th>
<th>1839 List</th>
<th>1901 Roll</th>
</tr>
</thead>
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<tr>
<td>Stockbridge</td>
<td>272</td>
<td>John Johnson [Jr.] *</td>
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<tr>
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<td>225</td>
<td>Mrs. [Marselia] Fidler [Fiddler]</td>
<td>158?</td>
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<tr>
<td>Stockbridge</td>
<td>229</td>
<td>August Babbetz</td>
<td></td>
<td>spouse of 5</td>
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Notes:
* Individuals owning tracts in more than one lot.

## Appendix I

### 1901 Miller Roll and Brothertown Committee Roll

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### Appendix J

#### 1901 Residence on Miller Roll

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## Brothertown Indian Nation (Petitioner #67) Proposed Finding

**Appendix J: 1901 Residence on Miller Roll**

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Brothertown Indian Nation (Petitioner #67) Proposed Finding
Appendix K: 1905 State Census, Calumet County

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Note: 
[?] The identification of the individual on the census and a Brothertown descendant is questionable.

Appendix L
Analysis of BIN Petitioner’s Membership Lists

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<th>Corrected #Mbrs (n=)</th>
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<th>POBox or RRt</th>
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<td>125</td>
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<td>2/7/1996</td>
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<td>All</td>
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<td>No maiden names but parents’ names given; includes minors; names 1901 ancestor</td>
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### Appendix M

**Ancestors Claimed by BIN Members on 1839 Allotment List**

<table>
<thead>
<tr>
<th>Surname/Name on List</th>
<th>Dates</th>
<th>Spouse(s)</th>
<th>1839 Case # (1901 Roll #)</th>
<th># Descendants In BIN</th>
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<td>Caesar-Cocheegan, Lucy</td>
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<td>Bostwick, Henry</td>
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<tr>
<td>Coyhis, Benjamin J.</td>
<td>1818-1898</td>
<td>Dick, Laura Ann Dick, Rosella</td>
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<td># Descendants In BIN</td>
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<td>27?</td>
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## Appendix M: Ancestors Claimed by BIN Members on 1839 Allotment List

<table>
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<tr>
<th>Surname/Name on List</th>
<th>Dates</th>
<th>Spouse(s)</th>
<th>1839 Case # (1901 Roll #)</th>
<th># Descendants In BIN</th>
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<td>Walker, Hannah</td>
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<td>20</td>
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<tr>
<td>Skeesuck, Eliza @</td>
<td>1809-?</td>
<td>Dick, Elkanah</td>
<td>316?</td>
<td>8?</td>
</tr>
<tr>
<td>Skeesuck, George</td>
<td>n.d.</td>
<td>Johnson, Abigail</td>
<td>73</td>
<td>109</td>
</tr>
<tr>
<td>Skeesuck, Lucy</td>
<td>1816-1882</td>
<td>Welch, Henry B. Hart, Simeon</td>
<td>182</td>
<td>640</td>
</tr>
<tr>
<td>Skeesuck, Rufus</td>
<td>1835-1903</td>
<td>Fowler, Amanda Malvina</td>
<td>143 (479)</td>
<td>109</td>
</tr>
<tr>
<td>Skeesuck, Ruth</td>
<td>1831-1870</td>
<td>Fowler, Orrin Gridley</td>
<td>328</td>
<td>8</td>
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Appendix - 97
<table>
<thead>
<tr>
<th>Surname/Name on List (,)=Maiden []=Married</th>
<th>Dates</th>
<th>Spouse(s)</th>
<th>1839 Case # (1901 Roll #)</th>
<th># Descendants In BIN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Skeesuck, Samuel Sr.</td>
<td>1772-1850aft</td>
<td>Seketer, Mary</td>
<td>230</td>
<td>748</td>
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<tr>
<td>Wauby, Isaac</td>
<td>1800c-1870c</td>
<td>Jacques, Mary</td>
<td>31</td>
<td>32</td>
</tr>
<tr>
<td>Wauby, Sarah</td>
<td>1838-1901aft</td>
<td>Dick, Isaac McGee, Charles</td>
<td>166 (351)</td>
<td>32</td>
</tr>
<tr>
<td>Wiggins, Betsy (Handable)</td>
<td>1782-?</td>
<td>Wiggins, Martin</td>
<td>236</td>
<td>34</td>
</tr>
<tr>
<td>Wiggins, David</td>
<td>1812-1891</td>
<td>Hammer, Louisa</td>
<td>235</td>
<td>4</td>
</tr>
<tr>
<td>Wiggins, Elizabeth (Paul)</td>
<td>1812-1861</td>
<td>Wiggins, Ezekiel</td>
<td>53</td>
<td>30</td>
</tr>
<tr>
<td>Wiggins, Ezekiel</td>
<td>1805-1864</td>
<td>Paul, Elizabeth</td>
<td>29</td>
<td>30</td>
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<tr>
<td>Wiggins, Louisa (Hammer)</td>
<td>1807-1891</td>
<td>Wiggins, David</td>
<td>82</td>
<td>4</td>
</tr>
<tr>
<td>Wiggins, Martin (II)</td>
<td>1830-1863</td>
<td>Darry, Elizabeth Reed, Sarah Ann</td>
<td>183</td>
<td>30</td>
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* Individuals included in this table are named on the 1839 Allotment List, the associated 1840 map, and the 1845 amendatory report (Brothertown Allottees 1839). (see Appendix B in this PF)

@ There are alternative choices for this allottee; identity and Case # uncertain (see Appendix B in this PF).
### Appendix N
Ancestors Claimed by BIN Members on 1901 Claims List*

<table>
<thead>
<tr>
<th>Surname on Roll (Maiden)</th>
<th>Dates</th>
<th>Spouse(s)</th>
<th>1901 Roll #, (Brothertown Committee Roll #)</th>
<th>Principal 1839 Ancestor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adams, Avis T. (Sampson) [Johnson]</td>
<td>1829-1906</td>
<td>Johnson, Henry Clinton Adams, Edwin C.</td>
<td>1v, (3)</td>
<td>Self</td>
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<tr>
<td>Appley, Edna (Randall)</td>
<td>1875-1934</td>
<td>Appley, Frank</td>
<td>4v</td>
<td>Johnson, Jeremiah W. 41</td>
</tr>
<tr>
<td>Baker, James Arthur</td>
<td>1882-1932</td>
<td>Skeesuck, Florence L.</td>
<td>11v</td>
<td>Coyhis, Benjamin 190</td>
</tr>
<tr>
<td>Bostwick, Elmer Warren</td>
<td>1876-1950</td>
<td>Berrens, Mary Ann</td>
<td>32v</td>
<td>Caesar-Cochegan, Lucy 259 Dick, Alonzo David 56</td>
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<tr>
<td>Bostwick, Henry Franklin</td>
<td>1841-1933</td>
<td>Dick, Almira Hannah</td>
<td>29v</td>
<td>Caesar-Cochegan, Lucy 259</td>
</tr>
<tr>
<td>Brushell, Timothy</td>
<td>1829-?</td>
<td>Brushel, Mary Ann</td>
<td>48v</td>
<td>Self 206 Brushel, Samuel 173</td>
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<tr>
<td>Bullman [Welch], Leonard</td>
<td>1901-1985</td>
<td>Lueder, Clara Emma</td>
<td>59v</td>
<td>Sampson, Wealthy 113</td>
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<tr>
<td>Cooper, Lydia Ann (Johnson)</td>
<td>1843-1922</td>
<td>Mohawk, John Cooper, Daniel H.</td>
<td>86 not verif. to 1839</td>
<td>Johnson, John W. Jr. 228</td>
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<td>Coyhis, Hannah J[ane C. (Crosley)]</td>
<td>1869-1948</td>
<td>Coyhis, Melvin</td>
<td>94, (17)</td>
<td>Fowler, Permelia Jane; Dowler, Hezekiah</td>
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<td>Coyhis, Melvin</td>
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<td>Crosley, Hanna Jane</td>
<td>93, (16)</td>
<td>Coyhis, John R. Jr. 210</td>
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<tr>
<td>Cuish, Truman Henry</td>
<td>1862-1942</td>
<td>Nelson, Annie</td>
<td>103, (15) not verif. to 1839</td>
<td>Cuish/Kuish, John [Sr.] 171, Cuish/Kuish, John [Jr.] 207</td>
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<td>Surname on Roll</td>
<td>Dates</td>
<td>Spouse(s)</td>
<td>1901 Roll #, (Brothertown Committee Roll #)</td>
<td>Principal 1839 Ancestor</td>
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<td>Dayton, Alice</td>
<td>1877-?</td>
<td>Kiesner, John</td>
<td>125v</td>
<td>Fowler, Lyman Palmer 181 Dick, Orrey 215</td>
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<tr>
<td>DeGroat, Ida (Welch)</td>
<td>1878-1946</td>
<td>DeGroat, John Morris</td>
<td>128v</td>
<td>Brushel, Lucinda 214</td>
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<tr>
<td>Dick, Almira J. (Sampson)</td>
<td>1835c-1917</td>
<td>Kindness, Thomas Layton Dick, Orlando Deloise</td>
<td>148, (23)</td>
<td>Sampson, Clark D. Mathers, Rozina</td>
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<td>Eckert, Frederick Ray</td>
<td>1897-1961</td>
<td>Kolb, Ruby H.</td>
<td>II-53 not verif to 1839</td>
<td>Coyhis, Mary Angeline 106</td>
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<tr>
<td>Eckert, Meather (Boulier)</td>
<td>1877-1957</td>
<td>Eckert, Fredrick</td>
<td>II-50 not verif to 1839</td>
<td>Coyhis, Mary Angeline 106</td>
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<tr>
<td>Elyard, Mariette (Charles)</td>
<td>1866-1939</td>
<td>Elyard, James Wilson</td>
<td>II-388 not verif to 1839</td>
<td>Paul, Hannah 135?</td>
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<tr>
<td>Fowler, Bessie Aurilla</td>
<td>1886-1953</td>
<td>Welch, Sidney [A.] Rolet</td>
<td>176v, 54c</td>
<td>Fowler, Lyman Palmer 181</td>
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<tr>
<td>Fowler, Hugh Webster</td>
<td>1894-1953</td>
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<td>181, 45c</td>
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<tr>
<td>Fowler, James Lawrence</td>
<td>1858-1929</td>
<td>Kindness, Ruby Keeville, Letihta Josephine</td>
<td>193v, 52c</td>
<td>Fowler, Orsamus D. 33 Dick, Amanda J. 76</td>
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<td>Fowler, Orin Gridley (Jr.)</td>
<td>1864-1926</td>
<td>Kindness, Theresa Clara</td>
<td>179v, 43c</td>
<td>Fowler, Lyman 181</td>
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<td>Fowler, Orrey/Aurilla (Dick)</td>
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<td>Fowler</td>
<td>178, 53c</td>
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<td>Fowler, Teresa C. (Kindness)</td>
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<td>Fowler</td>
<td>180, 44c</td>
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<td>Fowler, Willis Parker</td>
<td>1853-1926</td>
<td>Fowler, Mary D. Fowler, Sarah Elisabeth</td>
<td>175, 49c</td>
<td>Crosley, Katherine’ Dick, William; Fowler, Alexander’ Potter, Amy’ Dick, Desdemona</td>
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<tr>
<td>Hammer, Bertram Victor</td>
<td>1867-1947</td>
<td>DeGroat, Cora Ann</td>
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<td><strong>Hammer, Thomas Dewayne</strong></td>
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<td>Hammer, Carrie</td>
<td>1860-1942</td>
<td>Bowe, Albert</td>
<td>207 not verif. to 1839</td>
<td><strong>Hammer, Thomas Dewayne</strong></td>
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<tr>
<td>Hammer, Gottlieb Frank</td>
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<td>DeGroat, Zelma E.</td>
<td>230v</td>
<td>Skeesuck, Lucy 182</td>
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<tr>
<td>Surname on Roll</td>
<td>Dates</td>
<td>Spouse(s)</td>
<td>1901 Roll #, (Brothertown Committee Roll #)</td>
<td>Principal 1839 Ancestor</td>
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<td>Hammer, Rufus A.</td>
<td>1850-1927</td>
<td>Chicks, Elinor</td>
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<tr>
<td>Johnson, Catherine (Welch)</td>
<td>1839-1920</td>
<td>Johnson, Joseph Manuel</td>
<td>296v</td>
<td>Skeesuck, Lucy 182</td>
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<tr>
<td>Johnson, Celia J.</td>
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<td>Johnson, Clayton S.</td>
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<tr>
<td>Johnson, Cora Etta</td>
<td>1893-1995</td>
<td>Juhlke, Frank</td>
<td>244v</td>
<td>Johnson, Orrin G. 203</td>
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<td>Johnson, Harry W.</td>
<td>1901-</td>
<td></td>
<td>301, 117c</td>
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<td>Johnson, Herbert</td>
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<td>Eggers, Beatrice</td>
<td>280v</td>
<td>Johnson, Avis T. (Sampson) 150</td>
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<td>Johnson, Hoel Emerson</td>
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<td>242, 108c</td>
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<td>Johnson, James Preston</td>
<td>1872-1935</td>
<td>Stacy, Lydia Effie</td>
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<td>Fowler, Alex 118Dick, Harriett 270?</td>
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<td>Johnson, Laton Dick</td>
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<td>298,114c</td>
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<tr>
<td>Johnson, Miles Marcellus</td>
<td>1854-1945</td>
<td>Fowler, Lisette Baker, Celia Ann</td>
<td>276v, 94c</td>
<td>Johnson, Avis T. (Sampson) 150</td>
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<tr>
<td>Johnson, Oscar Elwin</td>
<td>1896-1950</td>
<td>Spencer, Illma</td>
<td>259v, 129c</td>
<td>Johnson, Rowland 229</td>
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<td>Johnson, Permelia Jane (Fowler)</td>
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<td>257, 123c</td>
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<td>Johnson, Raymond S.</td>
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<td>265, 131c</td>
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<td>Kindness, Almira J.</td>
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<td>316, 135c</td>
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<tr>
<td>Kindness, Clarabel L. (Fowler)</td>
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<td>Kindness, James (Sr./Jr.) (H.)</td>
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<td>323v, 144c</td>
<td>Self 373</td>
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<td>Kindness, John C.</td>
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<td></td>
<td>325, 146c</td>
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<td>Kindness, Lloyd Francis Jr.</td>
<td>1898-1971</td>
<td>Antone, Cynthia Eva</td>
<td>311v, 140c</td>
<td>Kiness, James Sr./Jr. 323</td>
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<tr>
<td>Kindness, Marcia/Maria L.</td>
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<td></td>
<td>321, 140c</td>
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<tr>
<td>Kindness, Percival/Purcell A.</td>
<td></td>
<td></td>
<td>313, 132c</td>
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</table>
## Brothertown Indian Nation (Petitioner #67): Proposed Finding

**Appendix N: Ancestors Claimed by BIN Members on 1901 Claims List**

<table>
<thead>
<tr>
<th>Surname on Roll</th>
<th>Dates</th>
<th>Spouse(s)</th>
<th>1901 Roll #, (Brothertown Committee Roll #)</th>
<th>Principal 1839 Ancestor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kindness, Ruby</td>
<td></td>
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<td>Kindness/Kiness, Frances (Niles)</td>
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<td>Kiness/Kindness, Homer E.</td>
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<td></td>
<td></td>
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<tr>
<td>Lyons, Jane (Modlin) (Lateral ancestor only, no direct descendants)</td>
<td>1854-?</td>
<td>Lyons, Frank</td>
<td>345 not verif. to 1839</td>
<td>Hammer, Mary Elizabeth</td>
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<tr>
<td>Mathers, Charles A.</td>
<td>1871-1953</td>
<td>Welch, Ellen</td>
<td>349v</td>
<td>Mathers, Ransom A. 238</td>
</tr>
<tr>
<td>Mathers, Maria[h] (Sampson)</td>
<td>1822-1902</td>
<td></td>
<td>348, 153c</td>
<td></td>
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<tr>
<td>Mathers, William A.</td>
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<td>350, 152c</td>
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<tr>
<td>McGee, Ambrose</td>
<td>1862-?</td>
<td>Hammer, Almedia</td>
<td>352v</td>
<td>Wauby, Sarah 166</td>
</tr>
<tr>
<td>McGee, Lorena</td>
<td>1889-?</td>
<td>Pleshek, Joseph Anton</td>
<td>365v</td>
<td>Wauby, Sarah 166</td>
</tr>
<tr>
<td>McGill, Rosetta (Welch)</td>
<td>1837-1906</td>
<td>Gardner, Jeremiah McGill, Michael M.</td>
<td>353v, lateral</td>
<td>Brushel, Lucinda 214</td>
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<tr>
<td>Menner, John Henry</td>
<td>1845-1932</td>
<td>Doxtator, Caroline Doxtator, Lucretia Jane</td>
<td>356v</td>
<td>Menner, Phoebe Ann (Paul) 369</td>
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<tr>
<td>Niles, Harriet Adelaide (Fowler)</td>
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<td>359, 154c</td>
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<tr>
<td>Paul, George Delano Never in WI, all desc. b.NY</td>
<td>1871NY-1942NY</td>
<td>Sawyer, Eva Violet Weeks, Fannie</td>
<td>378 not verif. to 1839</td>
<td>Paul, Rodolphus 193 Died in NY, never in WI</td>
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<td>Pemberton, Harriet (Welch)</td>
<td>1841-aft1905</td>
<td>Denny, Syrenius S. Pemberton, John</td>
<td>380v</td>
<td>Skeesuck, Lucy 182</td>
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<tr>
<td>Pendleton, Orpha Jane (Welch)</td>
<td>1848-1940</td>
<td>Pendleton, Louis</td>
<td>385v</td>
<td>Skeesuck, Lucy 182</td>
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*Appendix - 102*
<table>
<thead>
<tr>
<th>Surname on Roll ()=Maiden []=Married</th>
<th>Dates</th>
<th>Spouse(s)</th>
<th>1901 Roll #, (Brothertown Committee Roll #)</th>
<th>Principal 1839 Ancestor</th>
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<tbody>
<tr>
<td>Polzin, Alice (Baker)</td>
<td>1869-1941</td>
<td>Polzin, Ferdinand</td>
<td>307v</td>
<td>Sampson, Sarah L. Sampson, George Potter, Hannah</td>
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<td>Potter, Arthur Avery</td>
<td>1876-1946</td>
<td>Quinney, Sadie Martha</td>
<td>390v, 162c</td>
<td>Potter, Henry 141 Fowler, Hezekiah 24 Skeesuck, Fanny 58</td>
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<td>Potter, Charlotte A. (Fowler)</td>
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<td>388, 161c</td>
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<tr>
<td>Roulette, Elmonia (Simons)</td>
<td>1868-1935</td>
<td>Roulette, Smith</td>
<td>400v</td>
<td>Coyhis, Mary A. 106 Mathers, Ransom A. 238 Sampson, Mariah 98</td>
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<td>Sampson, Fred</td>
<td>1899-</td>
<td></td>
<td>416, 201c</td>
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<td>Sampson, James D.</td>
<td>1857-1916</td>
<td>Fowler, Amy Selina Krumbein, Carolina Lena Marie</td>
<td>408v</td>
<td>Sampson, Clark David 232</td>
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<tr>
<td>Schneider, Clarissa Jane (Johnson)</td>
<td>18859-1927</td>
<td>Schneider, Theodore Martin</td>
<td>429v</td>
<td>Johnson, John W. Jr Fowler, Martha Nedson, Phoebe</td>
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<tr>
<td>Schneider, Laura/Loretta</td>
<td>1886c-1944</td>
<td>Gierl, Robert</td>
<td>427v</td>
<td>Johnson, John W. Jr Fowler, Martha Nedson, Phoebe</td>
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<tr>
<td>Schneider, Mary Martina</td>
<td>1879-1970</td>
<td>Helmer, Herman Joseph</td>
<td>433v</td>
<td>Johnson, Martha (Fowler) 124</td>
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<tr>
<td>Shapely, Phebe J. (Johnson)</td>
<td>1821-1903</td>
<td>Sampson, Clark David Shapely, William Harris</td>
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<td>Shelley, Jobe P.</td>
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<td>450, 172c</td>
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<td>Shelley, John</td>
<td>1831-1905</td>
<td>Simons, Charlotte ?, Sylvia Boyer, Margaret</td>
<td>447v, 166a</td>
<td>Self 310</td>
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<td>Shelley, Permelia A. (Fowler)</td>
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<td>457, 164c</td>
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<td>Skeesuck, Ernest Alonzo</td>
<td>1870-1923</td>
<td>Bundy, Lillian Viola</td>
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<td>Skeesuck, George 73</td>
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## Surname on Roll (Maiden) [Married]

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<th>Dates</th>
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<th>Principal 1839 Ancestor</th>
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<tbody>
<tr>
<td></td>
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<tr>
<td>Skeesuck, George</td>
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<td>482, 177c</td>
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<tr>
<td>Skeesuck, Rufus</td>
<td>1835-1903 Fowler, Amanda Malvina</td>
<td>479v, 175c</td>
<td>Self 143</td>
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<td>Sykes, Frank B.</td>
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<td>499, 182c</td>
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<td>Sykes, Sylvester</td>
<td>1843-1908 Bermingham, Elizabeth Anne</td>
<td>498v, 181c</td>
<td>Skeesuck, Arnold 89</td>
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<tr>
<td>Welch, Abby Jane (Hart)</td>
<td>1845-1908 Welch, Charles H.</td>
<td>530v</td>
<td>Hart, Luanette (Fowler) 68</td>
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<td>Welch, Cyrus A.</td>
<td>1844-1913 Tower, Henrietta S.</td>
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<td>Welch, James A.</td>
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<td>Welch, John Franklin</td>
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<td>542v, direct &amp; lateral ancestor</td>
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<td>1899-1988 Moon Alfred</td>
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<td>Welch, Sidney [A.] Rolet</td>
<td>1884-1965 Fowler, Bessie Aurilla</td>
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<td>Welch, Stephen Fennimore</td>
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<td>Hart, Luanette (Fowler) 68</td>
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<td>Young, Clara Ellen (Lowry)</td>
<td>1871-1950 Young, George Clayton</td>
<td>570 not verif. to 1839</td>
<td>Cuish/Kuish, John (Sr.) 171</td>
</tr>
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</table>

* Individuals included in this table are named on the 1901 Miller Roll and the 1906 Final Decree List (the latter indicated by the numeral “II” preceding the Roll Number and the 1845 amendatory report (Anthony et al. 10/-1839). (see Appendix B in this PF) 
  v=Verified descendant from 1839 Allottees List ancestor  
  Bold=Not on 1839 Allottees List, not allotted, identified in 1901-1906 testimony, no ancestor on 1839 Allottees List
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