

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**DISTRICT 1199W/UNITED PROFESSIONALS FOR  
QUALITY HEALTH CARE, SEIU, AFL-CIO, CLC**

Involving Certain Employees of  
**SAUK COUNTY**

Case 20  
No. 47677  
ME (u/c)-3243

**Decision No. 17343-D**

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**Appearances:**

**Attorney Todd J. Liebman**, Corporation Counsel, Sauk County, 505 Broadway, Baraboo, Wisconsin 53913, appearing on behalf of Sauk County.

**Mr. Jeff Leys**, Senior Staff Representative, 2001 West Beltline Highway, Suite 201, Madison, Wisconsin 53713-2366, appearing on behalf of United Professionals for Quality Health Care.

**ORDER DENYING PETITION FOR REHEARING**

On November 25, 2002, the Wisconsin Employment Relations issued Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit with Accompanying Memorandum in the above matter wherein it was concluded among other matters that the incumbent Jail and Occupational Health Nurses Margo Busser and Kathryn Whalen are municipal employees and that the 2001-2003 bargaining agreement between Sauk County and District 1199W/United Professionals for Quality Health Care, SEIU, AFL-CIO, CLC, did not bar Busser and Whalen's inclusion in the United Professionals' bargaining unit.

On December 16, 2002, the County filed a petition for rehearing pursuant to Sec. 227.49, Stats. 1/ asserting the Commission had committed an error of law by concluding that the 2001-2003 agreement did not bar Busser and Whalen's inclusion in the United Professionals' bargaining unit and that the County had new evidence sufficiently strong to reverse the Commission's conclusion that Jail and Occupational Health Nurse Busser is a municipal employee.

**To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.**

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1/ Section 227.49(3), Stats. provides:

- (3) *Rehearing will be granted only on the basis of:*
    - (a) *Some material error of law.*
    - (b) *Some material error of fact.*
    - (c) *The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.*
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On January 6, 2003, United Professionals filed a statement opposing the petition.

As to the alleged error of law, we remain satisfied that our interpretation of the 2001-2003 agreement is correct.

As to the alleged “new evidence,” the County asserts by affidavit that it is creating the new position of Director of Inmate and Occupational Health that will be filled by Busser and that Busser will have sufficient authority in the new position to be a supervisor and a managerial employee. Thus, through its petition, the County asks us to rule on the bargaining unit status of a new position – not to consider whether we erred when determining the status of the Jail and Occupational Health Nurse position held by Busser. We decline the invitation. If the parties are unable to reach agreement on the bargaining unit status of the Director, a new unit clarification petition can be filed.

Having reviewed the record and being fully advised in the premises, we conclude that the petition should be denied because we made no error of law and the County has not presented “new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered with due diligence,” within the meaning of Sec. 227.49(3)(c), Stats.

NOW, THEREFORE, it is

**ORDERED**

The petition for rehearing is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 15th day of January, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

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