

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

MISCELLANEOUS DRIVERS, HELPERS, &)	
PUBLIC EMPLOYEES LOCAL NO. 610,)	
)	
Petitioner,)	
)	
vs.)	Public Case No. 82-002
)	
THE CONGRESS OF INDEPENDENT UNIONS,)	
)	
Intervenor,)	
)	
vs.)	
)	
CITY OF HERCULANEUM,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the Miscellaneous Drivers, Helpers and Public Employees Local No. 610, filing a petition for certification as public employee representative of Herculaneum. On July 14, 1982 a hearing was held in Clayton, Missouri, at which representatives of the Petition, Respondent, and Intervenor were present. The case was heard by State Board of Mediation Chairman Mary Gant, Employer Member William Hunker, and Employee Member Joseph Cointin. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining unit determinations by Section 105.525, RSMo 1978.

At the hearing the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

In September, 1979 the Board certified the Industrial Miscellaneous Workers Local 30, affiliated with Congress of Independent Unions as the exclusive bargaining representative for a unit defined as "all employees in the City of Herculaneum street, water, and maintenance departments, excluding supervisors." Local 30 and the City entered into two separate memoranda of understanding, both of which are expired, the latest expiring in June, 1981.

There are six workers employed by the City in the street and water classifications and no longer a maintenance classification. The City also employs four clerical employees; three full-time and one part-time. The street and water employees are supervised by the superintendent of public works and the clericals are supervised by the city clerk.

CONCLUSIONS OF LAW

We granted the Congress of Independent Unions to intervene in these proceedings by reason of our previous certification in Public Case No. 79-035. In that case we certified the CIU as an affiliated international to Local 30. Where there is a combination decertification-certification petition, as in the case before us now, the currently certified union meets the "legitimate interest" test.

Local No. 610 has petitioned to be certified as public employee representative for all employees of the City of Herculaneum, excluding the city clerk and superintendent of public works. The Respondent objections to the inclusion of clericals into the existing unit. The Intervenor objects to the petition based on a contract bar theory. There are two issues before the Board: (1) Whether these service workers and clericals together constitute an appropriate bargaining unit. An appropriate bargaining unit is defined by Section 105.500(1), RSMo 1978 as:

"a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned,"

and (2) Whether there is a valid memorandum of understanding in effect between Respondent and Intervenor. Although Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest," the Board has consistently looked to a number of factors in determining whether employees have such a community of interest. Service Employees International Union, Local 96, AFL-CIO, vs. City of Blue Springs, Public Case No. 79-031 (SBM 1980); Service Employees International Union Local 50, vs. City of Springfield, Public Case No. 79-013 (SBM 1979). The deciding factor in this case is the danger of over fragmentation of bargaining units.

It has been the position of this Board that employees who possess skill and duties not shared by other employees will require separate representation only when it is necessary to protect their rights to effective bargaining, Service Employees International Union, Local 50, vs. City of Springfield, Supra. In this case, excluding the four clericals from the unit of service employees would so weaken their position at the bargaining table as to deny their right to effective bargaining. In order to insure the right of these ten workers to effective bargaining, we join them into one bargaining unit.

As to the issue of whether this petition is precluded by a contract bar, we find the evidence to clearly show that there has been no memorandum of understanding in effect between Respondent and Intervenor since June, 1981.

DECISION

It is the decision of the State Board of Mediation that an appropriate unit of employees is as follows:

"all employees in the City of Herculaneum, excluding the city clerk, superintendent of public works, and all other supervisors."

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or a designated agent thereof, among the employees in the unit found appropriate, as early as possible, but no later than sixty (60) days from the date below. The exact time and place will be set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately proceeding the date below, including employees who did not work during that period because of vacation or illness. Ineligible to vote are those employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible to vote shall vote whether or not they desire to be represented by: Petitioner, Miscellaneous Drivers, Helpers and Public Employees Local 610, or Intervenor, Industrial and Miscellaneous Workers Local 30, affiliated with the Congress of Independent Unions, or no representation for the purpose of exclusive representation.

It is hereby ordered that the Respondent shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, and Intervenor, within fourteen (14) days from the date of receipt of this decision, an alphabetical list of the names and addresses of employees in the unit determined to be appropriate who were employed during the designated payroll period.

Signed this 18th day of October, 1982.

STATE BOARD OF MEDIATION

(S E A L)

/s/ Mary L. Gant
Mary L. Gant, Chairman

/s/ William Hunker
William Hunker, Employer Member

/s/ Joseph Cointin
Joseph Cointin, Employee Member