

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

PECKHAM, INC.,
Employer-Respondent,

MERC Case No. 21-H-1537-CE

-and-

LAMIYA ADEL MAHDI,
An Individual Charging Party.

APPEARANCES:

Lamiya Adel Mahdi, appearing on her own behalf

DECISION AND ORDER

On August 30, 2021, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order¹ in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service, and no exceptions have been filed by either of the parties.

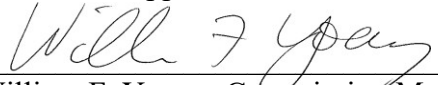
ORDER

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Tinamarie Pappas, Commission Chair



William F. Young, Commission Member

Issued: November 4, 2021

¹ MOAHR Hearing Docket No. 21-017294

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
MICHIGAN EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

PECKHAM, INC.,
Employer-Respondent,

-and-

Case No. 21-H-1537-CE
Docket No. 21-017294-MERC

LAMIYA ADEL MAHDI,
An Individual Charging Party.

**DECISION AND RECOMMENDED ORDER OF
ADMINISTRATIVE LAW JUDGE ON
ORDER TO SHOW CAUSE**

On August 2, 2021, Lamiya Adel Mahdi, filed the above unfair labor practice charge with the Michigan Employment Relations Commission (Commission) against Peckham, Inc., a non-profit corporation organized under the state's Nonprofit Corporation Act, Public Act 162 of 1982.¹ The charge was assigned to Administrative Law Judge Travis Calderwood of the Michigan Office of Administrative Hearings and Rules (MOAHR), acting on behalf of the Commission.

Charging Party's allegations against Peckham, Inc., describe what appears to be a very hostile work environment in which Charging Party is not being treated fairly with respect to the work that is expected of her.

According to the website maintained by Peckham Inc., the business operates as a "vocational rehabilitation organization, provides job training opportunities for persons with significant disabilities and other barriers to employment."² The website goes on to state:

Peckham provides people with physical, cognitive, behavioral and socio-economic challenges, a platform to demonstrate their ability, learn new skills, participate in work and enjoy the rewards of their success. Peckham provides opportunities so clients can experience meaningful employment growth.

Upon initial review of the Charge it appeared likely that dismissal of the charge without a hearing may be warranted. Rule 165 of the Commission's General Rules, R. 423.165, states that

¹ According to state records maintained the Michigan Department of Licensing and Regulatory Affairs (LARA), Peckham Inc., was first incorporated in Michigan on September 25, 1979.

² See <http://www.peckham.org>.

the Commission or an administrative law judge designated by the Commission may, on their own motion or on a motion by any party, order dismissal of a charge without a hearing for the grounds set out in that rule, including that the Commission lacks jurisdiction over a party, or that it does not state a claim upon which relief can be granted under PERA. See R. 423.165(2)(a) and (d).

Accordingly, on August 5, 2021, I directed Charging Party to respond in writing and show cause why her charge against the Employer should not be dismissed without a hearing. More specifically, that order directed Charging Party to indicate and provide support for the Commission's exercise of jurisdiction under the Public Employment Relations Act (PERA), 1965 PA 379 as amended, or the Labor Relations and Mediation Act (LMA), 1939 PA 176 as amended. Addressing the possibility that Charging Party's allegations fell under the jurisdiction of the LMA, Charging Party was directed to establish that the National Labor Relations Board (NLRB) either lacked jurisdiction or that it had refused to exercise jurisdiction over the Employer. Additionally, Charging Party was also directed to indicate how her allegations stated a charge under PERA or the LMA. That order instructed Charging Party to file her response on or before August 19, 2021.

My office attempted service on Charging Party by way of the email address she provided when she initially filed her charge with the Commission.³ That attempt was returned as undeliverable. Since then, several attempts have been made to contact Charging Party by telephone with several messages being left. As of the date of this Decision and Recommended Order my office has been unable to contact Charging Party.

Discussion and Conclusions of Law:

In the instant matter, my office has attempted over several weeks to contact Charging Party by way of the contact information provided by her at the time that this charge was filed. Charging Party has failed to respond to multiple messages. As such, I consider this charge to be abandoned and therefore dismissal is appropriate.

Irrespective of Charging Party's abandonment, dismissal of this charge nonetheless appears appropriate for the reasons first set out in my August 5, 2021, order. Regarding the Commission's jurisdiction, it is not clear that the Commission is the proper venue in which to consider these allegations. The predominant number of unfair labor practice charges considered by the Commission involve parties subject to the Public Employment Relations Act (PERA), 1965 PA 379 as amended. Parties subject to PERA include, and are almost exclusively limited to, public sector employers, public sector employees, and labor organizations representing public sector employees. In the instant matter Peckham Inc., clearly appears to be a private entity and therefore is not subject PERA.

³ As of August 5, 2021, MOAHR Policy and Procedure No. 15 authorized service by electronic means, including email. Policy and Procedure No. 15 was put into place in response to the COVID-19 pandemic and was initially meant to operate on a temporary basis. Effective August 12, 2021, Policy and Procedure No. 15 was rescinded and replaced by MOAHR Administrative Standard 2021-1 was enacted making service by electronic means, including email permanent.

The above determination notwithstanding, the Commission does enjoy jurisdiction, albeit very limited, over some private employers under PERA's companion statute, the LMA. However, within most cases involving private employers the National Labor Relations Board (NLRB) preempts the Commission's jurisdiction where a controversy is arguably subject to the National Labor Relations Act's (NLRA) provisions. *Int'l Longshoremen's Ass'n v Davis*, 476 US 380, (1986). Under the doctrine of federal preemption, the Commission has jurisdiction to resolve unfair labor practice disputes **only** when the NLRB lacks or refuses to exercise jurisdiction. See e.g. *AFSCME v Dep't of Mental Health*, 215 Mich App 1 (1996). Here there is no indication that the NLRB lacks or has otherwise refused to exercise its jurisdiction over Peckham Inc. As such, the Commission lacks jurisdiction to address these allegations under the LMA.

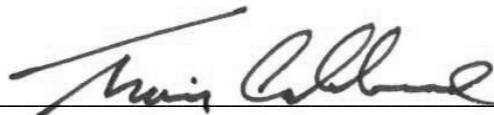
Moreover, ignoring the above jurisdictional concerns, Charging Party's filing fails to allege a violation under either the LMA or PERA. With respect to employers, neither PERA nor the LMA prohibit all types of discrimination or unfair treatment. Moreover, the Commission is not charged with interpreting the terms of a collective bargaining agreement to determine whether its provisions were followed. Rather, the Commission's jurisdiction with respect to employers is limited to determining whether the employer interfered with, restrained, and/or coerced an employee with respect to his or her right to engage in union or other protected activities. Absent an allegation that the employer interfered with, restrained, coerced or retaliated against the employee for engaging in such activities, the Commission is prohibited from making a judgment on the merits or fairness of the employer's action. See e.g. *City of Detroit (Fire Dep't)*, 1988 MERC Lab Op 561, 563-564.

Accordingly, and for the reasons stated herein, I recommend that the Commission issue the following order dismissing the charges in its entirety.

RECOMMENDED ORDER

It is hereby ordered that the unfair labor practice charge be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Travis Calderwood
Administrative Law Judge
Michigan Office of Administrative Hearings and Rules

Dated: August 30, 2021