

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

In the Matter of:

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 337,  
Labor Organization-Respondent,

-and-

MICHAEL WILLIAMS,  
An Individual Charging Party.

Case No. CU14 J-046  
Docket No. 14-026056-MERC

APPEARANCES:

Kevin J. O'Neill, for Respondent

Jeffrey S. Burg, for Charging Party

**DECISION AND ORDER**

On February 26, 2015, Administrative Law Judge Travis Calderwood issued his Decision and Recommended Order in the above-entitled 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 Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

**ORDER**

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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/s/  
Edward D. Callaghan, Commission Chair

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/s/  
Robert S. LaBrant, Commission Member

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/s/  
Natalie P. Yaw, Commission Member

Dated: April 24, 2015

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 337,  
Respondent-Labor Organization,

Case No. CU14 J-046  
Docket No. 14-026056-MERC

-and-

MICHAEL WILLIAMS,  
An Individual Charging Party.

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APPEARANCES:

Kevin J. O'Neill for the Respondent-Labor Organization

Jeff Burg for the Individual Charging Party

**DECISION AND RECOMMENDED ORDER OF  
ADMINISTRATIVE LAW JUDGE**

On October 15, 2014, Michael Williams (“Charging Party”), filed an unfair labor practice charge against the International Brotherhood of Teamsters, Local 337 (“Union” or “Respondent”), alleging that the Union violated its duty of fair representation in reference to an April 29, 2014, email from Charging Party’s employer, Stafford Transportation, to the Union, wherein the Employer indicated that Charging Party was terminated. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to Administrative Law Judge, Travis Calderwood, of the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (Commission).

After reviewing the Charge as filed, I concluded that it was not clear that the Commission had jurisdiction to consider the claims made by Charging Party. On October 22, 2014, I directed Williams to show cause why the charge should not be dismissed because the Commission lacks subject matter jurisdiction. That Order required that Williams file a timely response by November 5, 2014.

On November 5, 2014, my office received a notice of appearance from counsel for the Respondent, but had not received any response from Charging Party. On November 18, 2014, Williams appeared in person at the MAHS Detroit Office inquiring as to the status of his Charge. Later that day a voicemail message was left for him informing him that the Order to Show Cause

had been mailed to him on October 22, 2014, and a response had been due by November 5, 2014. The next day, November 19, 2014, Charging Party left a voicemail for my secretary implying that my office had lied to him and claimed that no Order had been sent, a sentiment he repeated later that same day when speaking directly with a MAHS staff member. As a result of that conversation another copy of the Order to Show Cause was sent, this time by certified mail. The deadline to respond was extended to December 23, 2014.

Beginning on November 22, 2014, my office began to receive numerous “filings” and “exhibits” in response to the Order. None of the documents or materials submitted by Charging Party were responsive to the issue regarding jurisdiction. Furthermore, there was no indication that those items submitted by Charging Party had also been provided to the Union, despite being directed to do so. After quite some difficulty, a telephone pre-hearing conference was scheduled for January 8, 2015. During this time, Charging Party continued to send emails to my office without copying the opposing side, despite repeated direction to do so. Two emails sent by Williams demanded that Respondent’s counsel be removed from handling this matter. On January 6, 2015, my office sent a confirmation email to the parties requesting that they provide contact phone numbers for the January 8, 2015, telephone call. On January 7, 2015, Charging Party sent an email at 9:00 a.m., and stated “I can't make it on that day because I will not be here (in Michigan) on that day. I need to know what this meeting's agenda is.” In a second email, sent at 12:17 p.m., Williams wrote, “I have a ‘right to know’ what their responses are to my allegations BEFORE any hearing is held.” [Emphasis in original]. Neither of those emails indicated that the opposing side was copied.

Later that same day, my secretary sent the following email, to all parties, which clearly indicated that it was composed by the undersigned, to the parties:

Mr. Williams,

Tomorrow’s telephone conference is NOT a hearing. Under Commission Rules 158 and 172, I have the authority to schedule and conduct pre-hearing conferences. I have attached the rules for your convenience.

While I am not required to provide you or anyone else with an agenda, I wish to make it very clear that the pre-hearing conference call is intended to aid me in addressing the paramount issue before me, i.e., whether the Michigan Employment Relations Commission has jurisdiction to even entertain the Unfair Labor Practice Charge filed by you. As indicated in my show cause order to you, dated October 22, 2014, I question whether the Commission, and by extension me, have the authority to preside over this dispute. 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). While you have not disclosed it directly, it appears from a review of the “exhibits” filed by you, as well as from the November 5, 2014, notice of appearance filed by Mr. O’Neill, that the National Labor Relations Board has exercised jurisdiction over the parties previously. This fact could prove dispositive to my issue regarding MERC’s

jurisdiction. As such, you should be prepared to provide confirmation whether the NLRB has exercised said jurisdiction. It matters not what the substance or outcome was regarding those matters, only that the NLRB has exercised jurisdiction over the parties.

Under Commission Rule 165, I am given the authority to dismiss a charge because the Commission lacks jurisdiction. I can do this with or without a hearing, per my discretion. I understand you are representing yourself, and it is for that reason that I wish to hold this conference call. While you have indicated that you will not be in Michigan tomorrow, please understand that I will attempt to conduct the conference call and absent a very compelling reason, you are expected to participate.

Lastly, you have been directed to either include or copy the other side in your communications on several different occasions. Any further ex parte communications will not be tolerated.

Shortly thereafter, Mr. Williams, once again neglecting to include the opposing side, sent the following response:

I don't know who wrote this, so

First, of all, thank you for the explanation and response "Ms. Marr, or Judge Calderwood"

Second, I have an attorney and his name is Jeff Burg

Third, after Ms. Marr told me to duplicate any emails/documents that I sent to her and send those copies to the other side and I have done that each and every time.

Upon receiving the claim by Mr. Williams that he was indeed represented by legal counsel, my office immediately contacted to Mr. Burg to confirm. Mr. Burg did in fact confirm that he was representing Mr. Williams. At that time the January 8, 2015, pre-hearing conference was adjourned without date.

On January 22, 2015, counsel for the Union provided portions of the following documents as proof that the NLRB had exercised jurisdiction over the parties in the past:

1. Stipulated Election Agreement, Case No. 07-RC-108057
2. Complaint and Notice of Hearing, Case No. 07-CA-107168
3. Order Conditionally Approving Withdrawal Requests, Dismissing Consolidated Complaint and Withdrawing Notice of Hearing, Case Nos. 07-CA-107168 and 07-CA-115741
4. Charge filed by Michael Williams, Case No. 07-CB-131634
5. Charge filed by Michael Williams, Case No. 07-CB-135989
6. Charge filed by Michael Williams, Case No. 07-CB-135909
7. Charge filed by Michael Williams, Case No. 07-CB-132360

The letter accompanying those submissions indicated that Respondent had sent a copy to Charging Party's newly retained counsel.

On January 29, 2015, I issued a second Show Cause Order on the issue regarding jurisdiction. The materials provided by Respondent on January 22, 2015, were referenced in that Order. Charging Party was directed to respond in writing by February 12, 2015. No response has been received.

#### Discussion and Conclusions of Law:

Charging Parties failure to respond to my January 29, 2015, Order, by itself, is cause for dismissal in favor of Respondents. The failure of a charging party to respond to an order to show cause may warrant dismissal of the charge. *Detroit Federation of Teachers*, 21 MPER 3 (2008).

The above notwithstanding I will address the issue of jurisdiction. It is clear that PERA governs labor law within the public sector. See *Kent Co Deputy Sherriffs' Ass'n v Kent Co Sheriff*, 238 Mich App 310, 313 (1999). Furthermore, it is well established that PERA addresses the rights and privileges of public, rather than private, employees. See *Lansing v Schlegel*, 257 Mich App 627 (2003), *aff'g City of Lansing*, 2001 MERC Lab Op 403. Section 1 of PERA defines "public employee" as a "person holding a position by appointment or employment in the government of this state, in the government of 1 or more of the political subdivisions of this state, in the public school service, in a public or special district, in the service of an authority, commission, or board, or in any other branch of the public service..."

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).

For the reasons set forth herein, I conclude that the Commission lacks subject matter jurisdiction over this charge and recommend that the Commission issue the following order:

**RECOMMENDED ORDER**

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Travis Calderwood  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated February 26, 2015