

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

In the Matter of:

COPA TOOL, LLC,
Employer-Respondent

MERC Case No. 20-B-0399-CE

-and-

WILLIAM R. MORGAN,
An Individual Charging Party.

APPEARANCES:

William R. Morgan, appearing on his own behalf

DECISION AND ORDER

On March 20, 2020, 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.

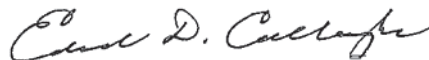
ORDER

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



Samuel R. Bagenstos, Commission Chair



Edward D. Callaghan, Commission Member



Robert S. LaBrant, Commission Member

Issued: June 26, 2020

¹ MOAHR Hearing Docket No. 20-004708

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

In the Matter of:

COPA TOOL, LLC,
Employer-Respondent,

-and-

Case No. 20-B-0399-CE
Docket No. 20-004708-MERC

WILLIAM R. MORGAN,
An Individual Charging Party.

APPEARANCES:

Charging Party appearing on his own behalf

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

On February 24, 2020, William R. Morgan (Charging Party) filed the above unfair labor practice charge with the Michigan Employment Relations Commission (Commission) against his former employer, Copa Tool, LLC (Respondent or Employer). The charge was assigned to Administrative Law Judge Travis Calderwood of the Michigan Office of Administrative Hearings and Rules, acting on behalf of the Commission.

Unfair Labor Practice Charge and Procedural History:

Charging Party's filing with the Commission alleges that he was terminated on January 22, 2020, "under false accusations." Charging Party goes on to claim that the Employer "failed to follow the disciplinary steps outlined in the employee handbook" and further that he "was not provided the opportunity to speak or defend any allegations against [him] nor was [he] provided any proof of the [sic] these allegations."

Upon initial review of the charge it appeared likely that dismissal of the allegations without a hearing was warranted. Rule 165 of the Commission's General Rules, R. 423.165, states that 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. See R. 423.165(2)(a) and (d).

As such, on March 2, 2020, I issued an order directing Charging Party to respond in writing and show cause why his allegations 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 PERA's companion statute, 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 Employer. The preceding jurisdictional questions notwithstanding, that order also indicated that the charge as filed, failed to articulate any actionable violation of either PERA or the LMA, and Charging Party was also directed to explain and articulate such a claim.

Pursuant to my March 2, 2020 order, Charging Party's response was due on March 16, 2020. As of the issuance of this Decision and Recommended Order, Charging Party has not filed a response to my order, nor has he sought to obtain an extension of time in which to file such a response.

Discussion and Conclusions of Law:

Charging Party's failure to respond to my March 2, 2020 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. See R 423.165(h); See also *Detroit Federation of Teachers*, 21 MPER 3 (2008).

Irrespective of Charging Party's failure to respond, it is not clear from the charge 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 PERA. 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, Copa Tool, LLC, appears to be a private employer and therefore not subject to PERA.¹

The above notwithstanding, the Commission does enjoy jurisdiction, albeit very limited, over some private employers under the LMA. However, within most cases involving private employers, the 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).

Further dooming Charging Party's claim against the Respondent, his initial filing is devoid of any allegation that the Employer interfered with, restrained, and/or coerced him with respect to his right to engage in union or other protected activities or otherwise violated in any way either PERA or the LMA. 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. Absent an allegation that the employer interfered with, restrained, coerced or

¹ Copa Tool, LLC, is recognized by Michigan's Department of Licensing and Regulatory Affairs as a Foreign Limited Liability Company organized under Ohio state law. Moreover, in the electronic filing submitted by Charging Party with the Commission initiating the present matter, Charging Party identified an individual located in Ohio as the Employer's representative.

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.

For the reasons stated herein, I recommend that the Commission issue the following order dismissing the charge 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: March 20, 2020