

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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JEFF DEMICCHI, COMPLAINANT

vs.

CNH INDUSTRIAL, RESPONDENT

Case ID: 639.0002  
Case Type: COMP\_CE

DECISION NO. 39778-A

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**Appearances:**

Jeff DeMicchi, 3504 County Line Rd., Mt. Pleasant, Wisconsin, appearing on his own behalf.

Becky Kalas, Attorney, Ford Harrison LLP, 180 N. Stetson Avenue, Suite 1660, Chicago, Illinois, appearing on behalf CNH Industrial.

**DECISION AND ORDER GRANTING MOTION TO DISMISS**

On September 19, 2022, Jeff DeMicchi filed a complaint with the Wisconsin Employment Relations Commission alleging that CNH Industrial had committed an unfair labor practice within the meaning of Wis. Stat. § 111.06(1)(c) of the Wisconsin Employment Peace Act.

On October 20, 2022, CNH filed a motion to dismiss the complaint alleging among other matters that only the National Labor Relations Board has jurisdiction over the complaint allegation.

DeMicchi did not file a response to the motion by or after a November 20, 2022 deadline.

Having considered the matter, I am persuaded that the Commission does not have jurisdiction over the complaint.

NOW, THEREFORE, it is:

**ORDERED**

The motion to dismiss is granted and the complaint is dismissed.

Issued at the City of Madison, Wisconsin, this 30<sup>th</sup> day of December, 2022.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Examiner

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**  
**GRANTING MOTION TO DISMISS**

It is well settled that where a complaint filed with the Wisconsin Employment Relations Commission contains allegations as to which the National Labor Relations Board (NLRB) could exercise jurisdiction, the Commission cannot assert any jurisdiction it might otherwise have. *See Algoma Plywood v. WERB*, 336 U.S. 301 (1949); *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959); *Local 248 v. WERB*, 11 Wis.2d 277 (1960). Here, the NLRB could assert jurisdiction over the DeMicchi complaint allegation that CNH Industrial is discouraging union membership by the content of communications CNH has had published in local media and has mailed to CNH employees. Therefore, the complaint is dismissed.

Issued at the City of Madison, Wisconsin, this 30<sup>th</sup> day of December, 2022.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Examiner