

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

In the Matter of:

SAGINAW TOWNSHIP,

Public Employer - Respondent in Case Nos. C02 A-003 & C02 A-010 and
Charging Party in Case No. CU02 E-029,

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN,

Labor Organization - Charging Party in Case Nos. C02 A-003 & C02 A-010 and
Respondent in Case No. CU02 E-029.

APPEARANCES:

Masud, Patterson & Schutter, P. C., by David A. Masud, Esq., for Saginaw Township

Frank A. Guido, Esq., for Police Officers Association of Michigan

DECISION AND ORDER

On February 9, 2004, Administrative Law Judge (ALJ) Roy L. Roulhac issued his Decision and Recommended Order in the above matter, finding that Saginaw Township (Employer), Respondent in Case Nos. C02 A-003 and C02 A-010, violated Section 10(1)(a) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 et seq. The ALJ held that statements made by Stephen Renico, the Employer's Chief of Police, to representatives of Police Officers Association of Michigan (POAM) on September 7, December 12, and December 18, 2001, and a memo sent by Chief Renico to POAM's members on January 4, 2002, interfered with the exercise of rights guaranteed under Section 9 of PERA. The ALJ further found that POAM, Respondent in Case No. CU02 E-029, had not violated its duty to bargain by making clandestine tape recordings of grievance meetings as alleged in the charge, and recommended that the charge against POAM be dismissed. The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA.

On April 2, 2004, the Employer timely filed exceptions to the ALJ's Decision and Recommended Order, a brief in support of the exceptions, and a request for oral argument.

POAM filed a timely brief in support of the ALJ's Decision and Recommended Order on May 6, 2004. POAM also requested oral argument. After reviewing the exceptions and briefs filed by the parties, we find that oral argument would not materially assist us in deciding this case. Therefore, the parties' requests for oral argument are denied.

On December 1, 2004, the Employer filed a motion to file a supplemental brief. A response to the motion was filed on December 6, 2004, by POAM. The Employer filed a reply to POAM's response on December 10, 2004, and POAM filed objections to the reply on December 17, 2004.

The Employer's motion to file a supplemental brief seeks to have us consider the decision in *Charter Township of Flint*, 17 MPER ¶54 (2004). That decision is an ALJ's Decision and Recommended Order adopted by the Commission without exceptions. We are not bound by an ALJ's decision where no exceptions are filed. Further, there is nothing in the *Charter Township of Flint* decision that would cause us to change our decision in this case. Accordingly, the Employer's motion to file a supplemental brief is denied.

To avoid redundancy, we will address the Employer's exceptions categorically, rather than individually, although we have reviewed each exception individually. The Employer's exceptions address both the ALJ's evidentiary rulings and his substantive findings. The Employer contends that: 1) the ALJ inappropriately admitted tape recordings and transcriptions of tape recordings of conversations; 2) the ALJ incorrectly admitted statements made during settlement discussions. The Employer also alleges that the ALJ's findings of a 10(1)(a) violation were not based on credible, material, or substantial evidence, and that the ALJ wrongly found that POAM's clandestine tape recordings did not violate PERA.

For reasons discussed below, we affirm the ALJ's evidentiary rulings and his finding that the Employer violated Section 10(1)(a) of PERA; we therefore adopt the recommended order with respect to the charges against the Employer. However, we find that the Employer's exceptions have merit with respect to its charge that POAM's surreptitious tape recordings were made in violation of PERA.

Evidentiary Issues:

The Employer takes exception to the ALJ's admission of tape recordings and transcriptions of tape recordings of conversations between representatives of POAM and Chief Renico. POAM's local association president, Officer Douglas Nelson, secretly tape-recorded conversations with Chief Renico on December 12, 2001. He also secretly tape-recorded a phone conversation between himself and Lieutenant Grauf in which Nelson told the Lieutenant about Chief Renico's conduct at the aforementioned meeting, as well as conversations with other employees. Union vice president Federspiel secretly tape-recorded a meeting with the

Chief on January 14, 2003.

At hearing, the Employer's objection to the first of three sets of tapes and transcripts was withdrawn. No objection was offered to the admission of two additional sets of tapes and transcripts. In fact, one such set and an additional transcript were offered into evidence by the Employer.¹ Although under these circumstances we uphold the ALJ's admission of this evidence, as discussed below, we agree with the National Labor Relations Board (NLRB), that such evidence should be inadmissible as a matter of policy.

As the ALJ acknowledged in his Decision and Recommended Order, "the Board excludes secret tape recordings of conversations that involve contract negotiations and contract proposals." ALJ Decision at 3, citing *NLRB v Maywood Do-Nut Co, Inc*, 659 F2d 108 (CA 9, 1981) and *Carpenter Sprinkler Corp*, 238 NLRB 974 (1978). In *Carpenter Sprinkler Corp*, 238 NLRB 974 (1978), enf'd 605 F2d 60 (CA 2, 1979), the Board elaborated on the reasoning behind the exclusion of secret recordings of contract negotiations:

We are convinced that a rule permitting the introduction into evidence of surreptitiously prepared tape recordings of negotiations would inhibit severely the willingness of the parties to express themselves freely and would seriously impair the smooth functioning of the collective bargaining process. Accordingly, we hold that recordings of conversations which are part of negotiations and which are made without notice to a party to the conversations should be excluded from evidence in Board proceedings. *Id.* at 975.

Since grievance meetings involve questions arising under the collective bargaining agreement, we find that the same rationale applies to the secret recording of these sessions. However, because the Employer in this case has effectively waived its objection to such evidence, we find this exception to be without merit.

The Employer also excepts to the ALJ's admission of statements made during the grievance procedure, alleging that such conversations constitute settlement discussions. In *Village of Chesaning*, 1974 MERC Lab Op 580, 586-587, aff'd, *Michigan Council No 55, American Federation of State, County and Municipal Employees, AFL-CIO, v Village of Chesaning*, 62 Mich App 157 (1975), we found that attempts at settling an unfair labor practice charge prior to the hearing had no probative value in determining whether a violation of PERA occurred.

¹ On March 25, 2002, the Union identified a tape recording of a December 12, 2001 meeting as its Exhibit 9 and a transcript of that recording as its Exhibit 9(a). [Volume No. 1, pages 92 &93]. Although it had initially objected, the Employer withdrew its objection to these exhibits and they were received in evidence [Volume No. 1, p.97]. On January 14, 2003, the Union identified the transcript of a tape recording, and a tape recording, respectively, of a December 18, 2001 meeting. These were admitted as Exhibits 11 and 11(a) without objection. [Volume No. 4, pages 132-33]. The Employer also introduced other tape recordings of employees which did not involve Chief Renico.

We have never extended such a rule to discussions that take place in attempts to resolve a contractual grievance. In any event, the rules of evidence do not require the exclusion of statements made in the course of compromise negotiations when, as here, they are offered for another purpose, such as to demonstrate unlawful threats, coercion, or restraint. See *Uforma/Shelby Business Forms v NLRB*, 111 F3d 1284, 1293 (CA 6, 1997).² Additionally, we note that most of the statements to which this set of exceptions is addressed are on the tapes and in the transcripts that were admitted without objection.

Charges Against the Employer, Case Nos. C02 A-003 & C02 A-010:

We adopt the following facts found by the ALJ and summarized here. On September 7, 2001, Chief Renico told representatives of POAM that he had thoughts of killing them and burying their bodies where no one could find them, as was done to Hoffa. After this outburst, Chief Renico calmed down and told the POAM representatives that because they were just messengers, he would not kill them. While escorting them to the door, he balanced his hands like a scale and said, “There is a price to pay when you come in here. You have to weigh the price, to see if it is worth the price.”

At a December 12, 2001 meeting, Chief Renico used profane and threatening language in stating what he would do if a grievance involving standby pay were filed. Chief Renico said that he would issue a direct order requiring employees to report to work during standby time if they filed a grievance. He made such statements as, “I’m going to give an order, a direct order, they’re going to report here in uniform on stand-by. I’ll pay them then . . . But they’re going to get a lot of folks pissed at them. . . . Then they want to play f. . . around, I’ll play f. . . around right back.”

During a December 18, 2001 meeting, Chief Renico said that if overtime became an issue, he would limit the number of officers on vacation to one per shift. He also indicated that he would put one of the grievance proponents on a “short leash.” On January 4, 2002, in response to the filing of grievances and his “short leash” statement to Union representatives, Chief Renico issued an order requiring Union representatives to obtain his permission before conducting Union business during working hours.

With regard to the Employer’s exceptions to the ALJ’s findings on issues of credibility, we are not persuaded by the Employer’s arguments and affirm the ALJ’s findings. The ALJ held that Chief Renico’s conduct and statements, as demonstrated during the September 7, December 12, and December 18 meetings and the January 4 memo, were threatening and coercive and interfered with the exercise of rights guaranteed under Section 9 of PERA, in

² Given the similarity between the language of Sections 9 and 10(1)(a) of PERA and Sections 7 and 8(a)(1) of the National Labor Relations Act (NLRA), the Commission is often guided by Federal cases interpreting the NLRA. *MERC v Reeths-Puffer Sch Dist*, 391 Mich 253, 260 (1974), *Detroit Police Officers Ass’n v Detroit*, 391 Mich 44 (1974) and *U of M Regents v MERC*, 95 Mich App 482, 489 (1980).

violation of Section 10(1)(a) of PERA. We agree. Although a certain latitude is extended regarding offensive or critical remarks made in bargaining and/or the grievance procedure, an employer cannot threaten employees or retaliate against them for pursuing a grievance. *Detroit Bd of Ed*, 1994 MERC Lab Op 841, 843; *Genesee Co (Drain Comm)*, 1984 MERC Lab Op 383; *City of Lincoln Park*, 1983 MERC Lab Op 362, 364-365.

Charge Against the Union, Case No. CU 02 E-029:

Only one remaining exception is material to our decision, the Employer's exception to the holding by the ALJ that POAM's clandestine tape recording of grievance discussions with Chief Renico did not violate PERA. In so holding, the ALJ reasoned that existing case law prohibiting the surreptitious recording of contract negotiations does not apply to grievance discussions. He further reasoned that because the taping was done in secret, i.e., without bargaining, there was no impermissible bargaining to impasse on a permissive subject of bargaining. We disagree.

Commission ALJs have found that the unilateral recording of collective bargaining sessions is an unfair labor practice. *Carrollton Twp*, 1983 MERC Lab Op 346; *Kenowa Pub Sch*, 1980 MERC Lab Op 967. In *Carrollton*, the ALJ cited the NLRB decision in *Bartlett-Collins Co*, 237 NLRB 770 (1978) in which the NLRB found that an employer violated the duty to bargain in good faith by insisting to impasse on the presence of a court reporter during collective bargaining negotiations. The ALJ in *Carrollton* found that the recording of negotiations is a permissive subject of bargaining, and the insistence to impasse on a permissive subject violates a party's obligation to bargain in good faith. The ALJ also stated:

Permitting the use of recording devices, or allowing the public to be present in negotiations, inhibits the willingness of parties to express themselves freely, and would seriously impair smooth functioning of the collective bargaining process.

The NLRB has indicated that the ruling in *Bartlett-Collins* relating to recording collective bargaining negotiations is equally applicable to grievance meetings. In *Pennsylvania Telephone Guild*, 277 NLRB 501 (1985), affd 799 F2d 84 (CA 3 1986), the NLRB held that a party fails to bargain in good faith by insisting to impasse on the use of a recording device during a grievance meeting. The NLRB indicated that the duty to bargain in good faith applies not only to negotiations, but to any meeting where questions arising under the collective bargaining agreement will be discussed.

We agree with the rationale of the NLRB. There is no question that grievance meetings are an integral part of the collective bargaining process and are subject to PERA's requirement

of good faith bargaining. As stated above, the recording of grievance meetings and other discussions impacting wages, hours, or other conditions of employment, severely inhibits the willingness of parties to express themselves and significantly impairs the bargaining process. We conclude that engaging in the secret tape recording of a grievance meeting interferes with the bargaining process and is the equivalent of bargaining to impasse on a permissive subject. Accordingly, we find that the Union breached the duty to bargain in good faith violating Section 10(3)(c) of PERA.

Based on the above discussion, we issue the following Orders:

ORDER IN CASE NO. C02 A-003 & C02 A-010

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

ORDER IN CASE NO. CU02 E-029

Respondent Police Officers Association of Michigan, its officers, and agents shall

1. Cease and desist from clandestinely tape recording grievance meetings and other discussions with the Employer impacting wages, hours, or other conditions of employment.
2. Post, for thirty consecutive days, the attached notice to its members in conspicuous places at its union office, meeting hall, or any other place where its members regularly meet to transact union business.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch, Commission Chairman

Harry W. Bishop, Commission Member

Nino E. Green, Commission Member

Dated: _____

NOTICE TO MEMBERS

After a public hearing before the Michigan Employment Relations Commission, the **POLICE OFFICERS ASSOCIATION OF MICHIGAN** has been found to have committed unfair labor practices in violation of the Michigan Public Employment Relations Act (PERA). Pursuant to the terms of the Commission's order,

WE HEREBY NOTIFY OUR MEMBERS THAT:

WE WILL NOT clandestinely tape record grievance meetings or other discussions with the Employer impacting wages, hours, or other conditions of employment.

POLICE OFFICERS ASSOCIATION OF MICHIGAN

By: _____

Title: _____

Date: _____

This notice must be posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission,

Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202.
Telephone: (313) 456-3510.

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SAGINAW TOWNSHIP,

Public Employer - Respondent in Case Nos. C02 A-003 & C02 A-010 and
Charging Party in Case No. CU02 E-029,

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POLICE OFFICERS ASSOCIATION OF MICHIGAN,

Labor Organization - Charging Party in Case Nos. C02 A-003 & C02 A-010 and
Respondent in Case No. CU02 E-029

APPEARANCES:

Masud, Patterson & Schutter, P. C., by David A. Masud, Esq., for Saginaw Township

Frank A. Guido, Esq., for Police Officers Association of Michigan

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan by Roy L. Roulhac, Administrative Law Judge for the Michigan Employment Relations Commission (MERC) on March 25, July 17, and September 11, 2002 and January 14, 15 and 16, 2003. The proceedings were conducted pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Based upon the record and post-hearing briefs filed by May 5, 2003, I make the following findings of fact, conclusions of law and recommended order pursuant to Section 16(b) of PERA.

I. The Unfair Labor Practice Charges

The Police Officers Association of Michigan (**AUnion@** or **APOAM@**) filed two unfair labor practice charges - Case No. C02 A-003 and C02 A-010 on January 7 and 14, 2002, respectively **B** against Saginaw Township (**ATownship@** or **AEmployer@**). As amended, the charges allege that: (1) During a September 7, 2001, meeting to discuss a labor-related matter, the Employer's agent, Chief of Police Stephen Renico, threatened the Union's local association

president Officer Douglas Nelson and vice president Detective Federspiel with grievous bodily harm and retaliation for engaging in protected activity; (2) During a command officers staff meeting on November 3, 2001, Chief Renico threatened Officer Nelson with physical harm and retaliation; (3) On December 12, 2001, Chief Renico threatened retaliation against the entire bargaining unit if grievances involving standby pay for court were filed; (4) On December 18, 2001, Chief Renico threatened retaliation against the entire membership if a grievance involving pay for an overtime assignment were filed; and (5) On January 4, 2002, Chief Renico issued an order that retaliated against unit members for filing grievances and threatened union officials with disciplinary action for failing to seek permission before representing unit members. The December 12 and 18, 2001, informal grievance meetings were secretly taped recorded by Officer Nelson and Detective, respectively.

On May 20, 2002, the Employer filed an unfair practice charge against POAM alleging that the clandestine tape recordings of informal grievance meetings by Officer Nelson and Detective Federspiel violated its duty to bargain in violation of PERA.

II. Admissibility of Secret Tape Recordings and Transcripts and Whether Tape Recording Informal Grievance Meetings Is an Unfair Labor Practice

The Employer claims that during the hearing it objected to the recordings= admission due to the privileged nature of grievance meetings, but since I allowed the admission of these recordings, Saginaw Township consented to the admission of the actual tape recordings and transcripts in order to insure that an accurate representation of those conversations was presented, as opposed to the unions characterization of those conversations.@

The Employer misstates the record. It is true that the Employer objected to the Unions offer to admit Officer Nelsons secret tape recording and transcript of his December 12, 2001 informal grievance with Chief Renico. However, before I made a ruling, the objection was withdrawn.³ In addition to agreeing to admit the tape and transcript of the December 12 conversation, the Employer introduced Officer Nelsons secret tape recording and transcript of his November 7, 2001 conversation with Lieutenant Grauf, as well as a transcript of Officer Nelsons February 5, 2002 clandestinely taped conversation with Lieutenant Larsen. Despite the Employer's "double-speak," I will address its arguments on the admissibility of tape recordings of informal grievance meetings.

³The Employer's Counsel stated that his client Aindicated to me that he asks that I withdraw the objection, in light of the fact that if the tape and the transcript both are going to be put in the record, it would be our position that we would rather have an accurate discussion or [sic] in the record of what took place on the 12th, as opposed to this witnesss characterization. We therefore have no objections to proposed 9(a), the tape, and 9(b), which I presume is going to be offered as the transcript.@(Vol. 1, pages 96-97)

According to the Employer, by tape recording grievance meetings without prior notice and bargaining, the Union abandoned its duty to engage in negotiations and unilaterally implemented its recording processes in violation of its duty to bargain. According to the Employer, persuasive case law and public policy require a finding that the Union committed an unfair labor practice and the Commission should exclude the surreptitious recordings and transcripts from these proceedings. The Employer, citing *NLRB v Maywood Do-Nut Co., Inc.* 659 F2d 108 (CA 9, 1981) and *Carpenter Sprinkler Corp.*, 238 NLRB No. 139 (1978), urges the Commission to adopt the Board's policy of excluding secret tape recording of conversations that involve contract negotiations. It further argues, citing, *NLRB v Pennsylvania Telephone Guild*, 799 F2d 84 (CA3 1986), that because of the similarities between collective bargaining and the grievance resolution process, the exclusionary remedy fashioned by the NLRB for clandestine tape recordings of negotiation sessions is equally applicable to secret tape recordings of grievance meetings.

I am not persuaded by any of the Employer's arguments. Although the Board excludes secret tape recordings of conversations that involve contract negotiations and contract proposals - *Maywood* and *Carpenter*, *supra*, and *Triple A Fire Protection*, 315 NLRB No. 55 (1994) - it has not extended this rule to secret recordings of grievance meetings to various other situations. See e.g., *Colburn Electric*, 334 NLRB 532 (2001) (taped conversation of a foreman saying that he would not hire employees because of their union membership); *International Fish & Meat*, 1997 NLRB Lexis 982 (1997) (conversations involving the alleged commission of unfair labor practices against several employees); *Williamhouse of California, Inc.*, 317 NLRB 699 (1995) (employee's tape recording of a speech by a management official made without the Company's knowledge or consent); *Consolidated Edison of New York*, 286 N.L.R.B. 1031 (1987) (surreptitious tape recording of an entire grievance meeting); *Florida Steel Corp.*, 224 NLRB No. 78 (1976) (tape recording of an investigative interview). The Board has also held that the lack of consent for recording a conversation is not grounds for rejecting a transcript of the recording. *P*I*E Nationwide*, 232 NLRB 1060, fn. 5 (1987); *McAllister Brothers Inc.*, 278 N.L.R.B. 601 (1986). The Board has also found that tape recordings of employer meetings to be the best evidence of what was said. See, e.g., *Algreco Sportswear Co.*, 271 NLRB 499, 505 (1984); *East Belden Corp.*, 239 NLRB 776, 782 (1978).

In this case, I find that the secret tape recordings and transcripts introduced by both parties were properly admitted. They are also the best evidence of what occurred during taped conversations with Chief Renico. This is especially true since the Employer, as will be discussed later, emphatically denies that Chief Renico made any of the statements attributed to him during a September 7, 2001 un-taped conversation. I listened to the tapes and read the transcripts and find no evidence, as the Employer argues, that Chief Renico was goaded into losing his temper or that Officer Nelson and Detective Federspiel staged the meetings to further their interest in smearing Chief Renico's reputation.

The Employer also cites *Pennsylvania Telephone Guild*, *supra*, and argues at great length

that the Union violated PERA by insisting to impasse on tape recording informal grievance meetings. See also *Kenowa Public Schools*, 1980 MERC Lab Op 967 (no exceptions) and *Carrollton Twp (Dep't of Public Works)*, 1983 MERC Lab Op 346 (no exceptions), where the Commission followed Board precedent and held that a party violates PERA by insisting to impasse on recording contract negotiation sessions. These cases, however, have no application to the facts of this case. Clandestine tape recordings, by their very nature, do not involve an insistence on taping a meeting.

Finally, the Employer, citing *City of Kalamazoo*, 2001 MERC Lab Op 138 (no exceptions), contends that even if secret tape recording and transcripts were admissible, efforts or statements made by parties during attempted settlement discussions are inadmissible and have no probative value in establishing whether or not a violation of law has occurred and, therefore, constitute protected speech. In *Kalamazoo*, the rule established in *Village of Chesaning*, 1974 MERC Lab Op 580, 586-587, *aff'd*, *AFSCME Council 25 v Chesaning*, 62 Mich App 157 (1975), is misstated. In *Chesaning*, the Commission concluded that “attempts at settlement of a contract dispute prior to an unfair labor practice hearing have no probative value in establishing whether or not a violation law has occurred.” In *Chesaning*, the Commission upheld an Administrative Law Judge’s refusal to admit evidence of settlement negotiations that occurred between the parties after an unfair labor practice charge was filed. The Commission followed this rule in *Saginaw Township Community Schools*, 1994 MERC Lab Op 701, 712 and *Saginaw Valley Trotting Ass’n*, 1982 MERC Lab Op 783, 796. This case, however, does not involve the admissibility of contract settlement discussions. I, therefore, reject the Employer’s argument that statements made during informal grievance meetings are protected. The statements, therefore, will be analyzed to determine whether they are implied or express threats that violate PERA.

III. Background

The Union is the certified bargaining representative of non-supervisory patrol officers and detectives employed by the Township. The Township employs forty-six full and part-time sworn officers, including two lieutenants and seven sergeants. Patrol and detective sergeants are members of the Command Officer Association of Michigan (COAM). Lieutenants are not represented. The parties’ collective bargaining agreement contains a grievance procedure that requires union representatives to meet with the chief of police or his designee prior to filing a formal grievance.

Officer Nelson has been a police officer for eighteen years - fourteen years with the Township and four with the Midland Police Department. Before becoming union president four years ago, he served in various union capacities. Detective William Federspiel has over fifteen years experience in law enforcement. Prior to his employment by the Township six years ago, he worked for nine and a half years in law enforcement in Cape Coral, FL. Detective Federspiel served as secretary-treasurer before being elected vice-president two years ago.

Chief Stephen Renico has been the Township’s chief of police since October 1996. Before

becoming chief, he was a patrol officer, patrol sergeant, crime prevention officer, crime prevention supervisor, jail security officer and dispatcher. He served as COAM's chief steward for 8-10 years. He is a member of many professional organizations and teaches at Saginaw Valley State University and at the regional police academy. Chief Renico describes himself as a "rough talker." He testified that people have characterized him as "a cross between Bobby Knight and Ralph Kramden."

Prior to December 2001, when the Union filed its unfair labor practice charges, Chief Renico was responsible for handling the Employer's labor relations matters. Chief Renico and Officer Nelson have held many meetings to discuss informal grievances, complaints, settlement issues and discipline. Chief Renico described his relationship with Officer Nelson as "getting along" and testified that occasionally they debated and argued heatedly about issues. Nelson, on the other hand, testified that for over five years, the Union has had ongoing problems with Chief Renico and only filed one grievance because Chief Renico "would intimidate people out of filing."⁴ Shortly after the grievance was filed in April 1998, Chief Renico issued the following order that restricted Nelson's ability to conduct union business during working hours:

Effective immediately, you will be given a reasonable amount of time off from your shift to investigate and process grievances, only after receiving my permission.

Additionally, you must obtain my permission to conduct any other type of union business on department time as well. The only exception to this will be when contract negotiations are scheduled. Sergeants are not authorized to give anyone permission to leave their assigned duties to conduct union business.

After normal duty hours, I am available by pager. If you are unable to reach me for some reason and you decide to conduct the union business while on duty, you should be prepared to explain the exigency of the situation and why it couldn't wait until permission could be obtained, presumably the next business day.

The department is under no obligation to provide you or any other members subsequently elected to a union position with the blanket opportunity to act on behalf of the union for any reason at any time while you are on duty. The contract is very clear and we will be following the contract.

Consider this a direct order.

⁴Nelson testified, "when the chief was adamant, even if it was in the contract that he [Chief Renico] was supposed to do it, he would get irate and he would threaten, you know, to retaliate against them, and a lot of times come right out and say, if they do this, I'm going to do that to them. And I'd go back and tell them and they'd say, man, I'm not doing it. Forget it; it's not worth it. And that's were left it."

Chief Renico testified that he issued the order because two or three days after he issued a fourteen-day disciplinary notice to an officer, he received a multi-page document from Nelson who had performed his own investigation, elicited typewritten statements from six or eight people and recommended that the lieutenant who accused the officer of being late be charged with dereliction of duty. After a time, Chief Renico testified, some of the restrictions were relaxed and Officer Nelson was allowed to conduct union business without a lot of oversight, as long as he felt Nelson was being fair and trustworthy.

On July 12, 2001, Chief Renico disciplined Officers Chad Brooks and Scott Jackson for allegedly conspiring to defraud the department by participating in an unauthorized shift trade that allowed Brooks to receive holiday pay while he was on vacation. Chief Renico described Brooks' and Jackson's actions as completely dishonest and reprehensible and told them that they had lost his trust. Among other things, Brooks and Jackson were permanently prohibited from trading shifts. Subsequently, an investigation by the Union exonerated Brooks and Jackson and on August 16, 2001, Chief Renico rescinded the letters of discipline, acknowledged that he made a mistake and apologized to both officers.⁵

A few weeks later, on September 6, 2001, Officer Nelson accompanied Officer Brooks to a meeting with Chief Renico to work on improving Officer Brooks and Chief Renico's strained relationship and to "Amend some fences." During the meeting, contrary to their past practice of not discussing issues involving pay in the presence of potential grievants, Nelson made a request to reinstate some vacation time that Brooks used allegedly due to stress caused by Chief Renico's inappropriate discipline. Chief Renico told Nelson that he was not prepared to address the issue and arranged to meet with Nelson the next day, September 7, 2001.

⁵According to Officer Nelson, Chief Renico has falsely accused other officers of wrongdoings on several occasions. Officer Coughlin was falsely investigated based on citizen's complaint and in the notice of investigation referred to by Chief Renico as an idiot. Officers Brooks and Coughlin were falsely accused and disciplined for allegedly not being courteous to a citizen. According to Nelson, when the Union brought the matter to the Chief's attention, he blew up and said he was going to write the officers up anyway. According to Officer Nelson, Officers Brooks and Coughlin were also falsely disciplined for being "rouge officers" and told by Chief Renico that he had lost their trust after being accused of having an excessive number of "resisting and obstruction" arrests. Officer Nelson testified that when he discussed the issue with Chief Renico, he was adamant, angry, and upset and wrote a memo to Nelson informing him that it was not of his business

IV. Alleged Unfair Labor Practices by The Employer B Facts

A. Alleged Threat of Physical Harm and Retaliation on September 7, 2001

1. Officer's Nelson's Version

The next day, September 7, 2001, Officer Nelson and Detective Federspiel went to Chief Renico's office to discuss restoring some of Brooks' vacation time. According to Officer Nelson, he knew from the start "Bright out of the gate" - that Chief Renico was angry because as soon as they walked in the room, Chief Renico turned from his file cabinet and said, "Hey, you little shit, you blindsided me yesterday," referring to Nelson's attempt to discuss restoring vacation pay to Brooks in Brooks' presence. Officer Nelson described Chief Renico as being very upset, very visibly disturbed, red-faced and angry at their request to restore some of Brooks' vacation time. Officer Nelson testified that Chief Renico said, "I have had thoughts of killing you both and burying your bodies."

According to Officer Nelson, at first, he thought the comment was a sick joke and was stunned and surprised, but that Chief Renico kind of hesitated and repeated again, "I have had thoughts of killing you both and burying your bodies, and I would do it better than Hoffa," but "he wouldn't do it this time, but if it ever gets to that point, we would be the first to know, and he would carry it out." According to Nelson, he replied, "with all due respect, Chief, I do not care if you're the chief or the president of the United States; we're going to tell you when you are wrong." Nelson testified that Chief abruptly ended the meeting, escorted them to the door, weighed his hands like a scale and said, "there is a price to pay when you come in here. You have to weigh the price to see if it is worth the price." As they were going out the door, according to Nelson, he told Chief Renico that something needed to be done to get some of Officer Brooks' time back.

Officer Nelson testified that to him, Chief Renico's statement meant several things, First of all, they meant that maybe my job, maybe was in jeopardy. I don't know. Is there a price to pay? Maybe you are going to lose your job. Maybe you are going to keep your job. They could have meant some type of physical harm could come to me, not necessarily maybe at that point but down the line. I also understood it to mean that, >you are not to bring these types of Union issues to me.-@

Officer Nelson told Sergeant Doyle and Lieutenant Grauf about Chief Renico's comments, although he gave conflicting accounts about when he told them. When cross-examined on March 25, 2002, Officer Nelson testified that within a few days he reported the Chief's death threat to Lieutenant Grauf. However, when questioned on September 11, 2002, Nelson retracted his testimony and stated that before telling Lieutenant Grauf about the incident during a grievance meeting that he secretly taped recording on November 7, 2001, he had previously discussed the incident with Sergeant Doyle. Officer Nelson explained that although he could not recall the exact

day that he spoke with him, it "probably towards the latter part of September, maybe mid-September." When asked to explain the discrepancy, Nelson said that the latter part of September was several days after September 7, rather than a few days.

Sergeant Doyle contradicted Nelson's testimony regarding the timing of their discussion. He testified that Officer Nelson told him about the September 7 incident within a month or two after it occurred, but that he did not recall what Nelson said. According to Doyle, he was under the impression that Nelson, who does not report to him, was filling him in on what had occurred because he (Doyle) was the President of the command unit, more of a President-to-President union person type of conversation. According to Nelson, although he told Sergeant Doyle to keep his conversation confidential, he expected that he would give him some ideas about handling the matter internally, but Sergeant Doyle told Chief Renico, who then turned the heat up on him.

On November 7, 2001, Officer Nelson secretly taped-recorded a conversation with Lieutenant Grauf.⁶ Nelson testified that he taped the conversation because he informed him of the death threat and asked him for advice and assistance. Officer Nelson also explained that he needed to protect himself because his job security was at risk and he could be possibly harmed. During the meeting Officer Nelson said:

I went in there like a gentleman, I'm always a gentlemanly [sic] when I deal with him professionally. I don't dislike the chief, but he irritated me this time, big time. And I'm with Federspiel and I asked him, I said look Brooks has his time that he's lost, to be honest with you, I don't mean it unkindly, you know you have put him in a situation where it resulted in taking time off and that's not fair to him. Can we get some comp time back or whatever? And he apparently was irritated enough, and first I thought he was kidding, you know. We had some dialogue back and forth, I can't remember exactly. He said something to the extent, Bill I think said something to the extent, don't get irritated at us we're just the messengers. He said, well, he said, I've had thoughts of killing you and burying you're bodies. But I know your [sic] just the messengers and if that ever happens, you'll be the first to know. And then I thought, well it's kind of a sick joke but I'll let it go. Then he says, that ... I'll kill you and bury you just like, Hoffa. Then he stands up and we're going out the door and he starts telling me, you've got to weigh things when you come in here, whether it's worth it or not. You know, whether it's really worth coming in here over an issue because there's a price to pay. And I thought, hey you're talking to the wrong fucking guy. I thought, I'd just ... Gary I'm irritated. This is between you and me. Please don't repeat it.

Lieutenant Grauf told Officer Nelson, "ok I won't . . . it just makes him wonder sometimes you know, why he does what he does."

⁶ Officer Nelson also secretly tape-recorded conversations with Chief Renico on December 12, 2001, and after the unfair labor practice charge was mailed on January 3, 2002, he secretly taped conversations with fellow bargaining unit member Officer Stinson on January 7 and 22, 2002; Sheriff Renico's secretary, Karen Tessin, on January 27, 2002; and a conversation with Lieutenant Larsen on February 5, 2002.

In describing Officer Nelson's "reporting" the incident to him, Lieutenant Grauf testified that he never took it to even be that he was reporting a threat. It was just so light . . . I did not take that he was making a serious report to me, just mentioning it to me, and then I guess when he said, "Let's just keep it between you and I," even reinforced the way I felt about it. According to Nelson, despite telling Lieutenant Grauf to keep their conversation confidential, he expected that Lieutenant Grauf would follow department policy and conduct an investigation.

On January 27, 2002, Officer Nelson clandestinely taped-recorded a telephone call he made to the home of Karen Tessin, Chief Renico's secretary. During the call, Officer Nelson told Tessin about the alleged death threat and she responded by saying that Chief Renico blows up and blurts out things in the heat of the moment that he doesn't really mean.

When asked on cross-examination why he did not report the alleged death threat immediately, Nelson said that to avoid embarrassing the department or the chief, he wanted to handle the matter in-house by reporting it to Sergeant Doyle and Lieutenant Grauf. According to Nelson, after the Union could not resolve the matter in-house, he reported it to the state police, the Michigan Department of Civil Rights, the Federal Bureau of Investigation and the Justice Department.

In the meantime, on January 7, 2002, the first of two unfair labor practice charges were filed. Officer Nelson has also filed a civil lawsuit against Chief Renico, a workers-compensation claim against the Employer and is on a medical leave of absence. At the time of the hearing, Officer Nelson was taking several medications including, Prozac, Xanax, a sleeping pill and Ritalin. He has been diagnosed with major depression, attention deficit disorder (ADD) and anxiety. Officer Nelson denies that he takes medication for disorders that affects his ability to recall. He acknowledged that he has memory difficulties, but not to the extent that he cannot distinguish between a few days, a few weeks, a few months.

2. Detective Federspiel's Version

Detective Federspiel's recollection of the September 7, 2001, meeting with Chief Renico is similar to Officer Nelson's. Detective Federspiel testified that after attempting to explain the Union's position, Chief Renico, visibly upset, red-faced and angry began slamming his fists on his desk. At one point, according to Federspiel, he told Chief Renico that they were just the messengers. Federspiel testified that Chief Renico sat down and calmly, but sternly, said that he knew we were just the messengers, and if he felt otherwise, he would kill us both and bury our bodies where no one could find them, and he would do it better than Hoffa. Then, Federspiel testified, Chief Renico got up, walked them to the door and said that they had to weigh their options whenever they came into his office because there was a price to pay.

According to Detective Federspiel, Chief Renico's statements conveyed to him that he "had better be careful as to what type of union business I bring before him because there would be retaliation to the membership, adverse effects to me and my career, maybe to my personal health and safety." Federspiel testified that he has had four chiefs in his career and he has never been addressed that way by anyone and that he had seen Chief Renico mad before, but this incident went way beyond anything he had seen. According to Detective Federspiel, "Whether he meant to kill me is in his mind. Only he knows what he meant. How I took it was that I better be very careful with my career, with what I bring to him as far as union business, and where my career may be going with an upcoming sergeants' exam."

According to Detective Federspiel, he reported the incident to Sergeant Doyle during the first week of October. He testified that because of his inability to compose himself and bring his thoughts back to work after the events of September 11, 2001, he did not report it earlier. According to Federspiel, Sergeant Doyle told him that the Chief acts that way regularly and "nothing can be done about it. That is just the way he is." Detective Federspiel testified that during a January 28, 2002, conversation with Sergeant Doyle about being "jilted" on the sergeants' examination, he did not mention the alleged threat because he already knew Doyle's response from their October 2001 conversation. According to Detective Federspiel, he told Doyle that he thought Chief Renico was totally unprofessional and he did not appreciate anyone talking to him in that manner. Federspiel also told Lieutenant Larsen and Detective McInerney that the Chief's conduct was unprofessional and he did not feel that he was going to "act out."

Sergeant Doyle contradicted Detective Federspiel's testimony about when their conversation took place. He testified that he talked with Federspiel around the time the grievances and unfair labor practice charge were filed and that Detective Federspiel, who was upset, told him he was "offended by the comment, but didn't feel threatened. He didn't think the Chief would certainly follow through with killing him."⁷

In the meantime, Detective Federspiel continued to interact with Chief Renico. Chief Renico gave Federspiel permission to perform an Elvis impersonation for the Township staff during Halloween and Chief Renico attended a Christmas party at Federspiel's home on December 15, 2001. Three days later, during an informal grievance meeting, Detective Federspiel clandestinely taped-recorded the meeting. Detective Federspiel is on a medical leave of absence, has filed a civil lawsuit against Chief Renico and a workers' compensation claim against the Township.

3. Chief Renico's Version

⁷Beginning December 17, 2001, several grievances were filed and the Union's unfair labor practice charge was mailed on January 3, 2002.

Chief Renico disputes Officer Nelson and Detective Federspiel's account of the September 7, 2001 meeting. He admits that he was upset that Nelson mentioned reinstating Brooks' vacation time and that he raised his voice and told Officer Nelson, "You blindsided me with that you little shit." According to Chief Renico, Nelson replied that he did not mean to bring it up that way, but he thought that it was important to talk about. Chief Renico testified that he maintained that he was not going to restore any of Brooks' vacation time because Brooks has requested time off before the July 12, 2001, disciplinary letter was issued to him.

Chief Renico denied that he pounded his fists on the table; threatened, even in jest, to kill Nelson and Federspiel; or mentioned Jimmy Hoffa and burying bodies. Chief Renico testified that the only thing he might have said was, "Yes, I know," in response to Detective Federspiel's statement that he should not get upset because they were just the messengers. Chief Renico acknowledged, however, that before September 7, 2001, he used the phrase "price to pay" while empathizing with Nelson about his position as union president and the pressures he was facing. Chief Renico, a former union steward, testified that he told Nelson that it was his experience that "when you assume that type of responsibility, there is a price to pay. You have to weigh your options. Whether you want to accept that responsibility and take the chance of people disliking you or disagreeing with you. You have to put up with all the extra hours, the lowest paying job you'll ever have, but you have to weigh those options."

B. Statement Made by Chief Renico on November 3, 2001,

Officer Nelson testified that on November 20, 2001, Sergeant Dennis McMahan told him that during a November 3, 2001 command staff meeting, Chief Renico made a death threat against Nelson and another officer. According to Nelson, McMahan told him that Chief Renico was extremely irate and angry about union resistance and made reference to union "radicals" and said "if resistance didn't stop, that he would rip off our heads - excuse me, I believe it was tear off - something, tear off our heads, rip out our lungs and shit down our throats." According to Nelson, Sergeant Masica, who also attended the meeting, confirmed that threats were made and told him that after the Chief learned that information from the meeting had been leaked to the union, Masica was ordered into Chief Renico's office where Renico demanded his loyalty or he would be excluded from meetings.

Sergeant McMahan, called as a rebuttal witness by the Employer, testified that during the November 3 meeting, he heard Chief Renico, while visibly upset, say that if Officers Nelson and Sadowski did not get their act together he would "put his hand down their throat, grab their lungs and rip them out and let them shake until they die." According to Sergeant McMahan, he did not recall Chief Renico making any reference to "union radicals."

Chief Renico denied that he used the term "union radical" or that he discussed the POAM during the meeting. He said that he told Sergeant McMahan to get Officer Sadowski, who is

supervised by Sergeant McMahan, squared away on medical responses or he was going to rip off his head and shit down his neck. Chief Renico denied that he made any reference to tearing off Officer's Nelson's head but that he only told Sergeant Pelkki, Nelson's supervisor, that he wanted him to find out what Officer Nelson's problem was with community policing and to get him on board.

C. Alleged Threat on December 12, 2001

On December 12, 2001, Officer Nelson was summoned from his road patrol duties by Chief Renico to discuss the denial of standby Circuit Court overtime pay to two officers who had presented overtime slips to him. According to Nelson, when he entered the office, Chief Renico went berserk, was extremely upset, red-faced, used a lot of profanities, and banged his fists on the desk. Officer Nelson testified that he surreptitiously tape-recorded the meeting because Detective Federspiel was unavailable to accompany him as a witness as required by the Union's by-laws. According to Nelson, he also tape recorded the meeting to protect his safety and job security after being threatened by Chief Renico on September 7. During the meeting, Chief Renico outlined how he would respond if the officers seeking standby court time filed a grievance. After Officer Nelson explains to Chief Renico that he had asked the officers to give the overtime court slips to him so that he would be the one to discuss the issue with him. Chief Renico responds:

I'll tell you what, here's what's going to happen, if they want the whole thing, then file a grievance, I'm going to deny it, we're going to go to arbitration on the damn thing, but in the meantime, anybody that gets subpoenaed at 8:15 in the morning, I'm going to give an order, a direct order, they're going to report here in uniform on stand-by. I'll pay them then, they'll be here, awake, on duty, and I'll pay them. That's not a problem.

They'll stay here until their ass goes to court or until dismissed. I'll keep on doing that until I get the subpoena time changed to 1:30. that's bullshit those guys went home, went to bed, and hit me with the damn court time. That's crap. That's a goddamn insult. That's an insult.

Officer Nelson explained that a memo dealing with the issue required subpoenaed officers to be available between 8:15 and 1:30. Chief Renico offered to pay the officers two hours at time and one-half, but he continued to insist that instead of staying up all day waiting to be called to court, the officers were at home with their little blankie . . . tucked in bed. Chief Renico, proclaiming that he was mad, told Nelson that he was not listening to everybody's side and was going to push back since he had been pushed. He asked Nelson to discuss his offer with the officers and get back with him the next day.

Chief Renico said that he was so mad that he did not want to even talk about anything because they had f*cked his day up, but that he was not mad at him (Nelson) and was not going to kill the messenger. Renico, describing his offer as a gift, told Nelson that if the offer were not

good enough, Nelson could file a grievance, which would be denied and go to arbitration. Renico repeated his warning that if a grievance were filed, he would issue an order requiring officers to report at 8:15, to impose discipline for any violations of the order, and to hammer their ass till they can't walk. Chief Renico told Officer Nelson that he was not going to make a big deal of the issue:

But if push comes to shove and those two lads want to push the issue, let them push. But they're going to get a lot of folks pissed at them. There will be a lot of folks pissed at them, support them, I don't care, but we're going to have a lot of goddamn available bodies around here on Y standby, they'll do the work, that's fine.

Chief Renico said he knew that the decision to push the issue was not his, but if the officers wanted to push it, he would tell Mike Thomas to delay our subpoenas:

I'll have the change in subpoenas for a month. Then they want to play fuck around, I'll play fuck around right back. For a one month in January, they're going to go to circuit court, you come in here at 8:15 in the morning, and end up standing around here with your thumb up their goddamn ass getting paid, they're going to be out there working until 1:30 when they leave.

Chief Renico ended the meeting by telling Nelson to feel free to tell the officers that "you got a good rise out of me. I hope they enjoy it, because the enjoyment is about to come to an end." Nelson apologized for the manner that the issue was brought to Renico's attention and agreed to continue their discussion.

On the same day, December 12, 2001, Officer Nelson and Chief Renico entered into a settlement agreement that allowed bargaining unit member Glenn Reif to retire rather than be discharged for violating a department that prohibited the use of offensive language in the workplace. Officer Reif used the word "nigger" in an official document.

Five days later, on December 17, 2001, the Union filed several grievances, the first since 1998.

D. Alleged Threat on December 18, 2001 to Retaliate

The next day, December 18, 2001, Detective Federspiel met with Chief Renico to discuss paying eight hours of overtime a bargaining unit member, who the Union contended had been bypassed for an overtime assignment. Detective Federspiel testified that he tape-recorded the meeting because Officer Nelson, who was on a medical leave of absence, was not available to serve as a witness. At the outset of the meeting, Chief Renico told Federspiel that he was not going to pay any money for a shortage. He related that:

Nobody works, I'm not going to pay them. You know if it becomes an issue, you know, every action causes an equal opposite reaction. Blah, blah, blah, union physics. I meant what I said yesterday, I mean if I have to, then I will limit the number of people on vacation to one per shift and then we'll go from there. We won't be faced with those kinds of problems, if somebody gets sick.

Detective Federspiel replied that as an administrator, Chief Renico had that right. Federspiel explained to Renico that he had been coming into his office more because Nelson was kind of taking a back seat. Chief Renico answered:

I think his health is failing him. I may have spent too much time up his asshole that clouded his vision.

Chief Renico said that at one time he had put Officer Nelson on a short leash for spending too much time investigating a grievance and he had thought about bringing it back because Nelson had publicly announced that he was not going out

there painting fences and plant flowers. So I sit back and look at Doug's productivity and I see a lot of goose eggs in there when it comes to traffic stops . . . routine, normal job description shit . . . and I'm thinking, gee, Doug is not planting flowers and not painting fences, not making traffic stops, not doing this, he must be spending way too much time on union business . . . its time to put you back on a short leash so you've got time to make those traffic stops and even paint a fence once in a while.

Chief Renico read the portion of the collective bargaining agreement that union representative will be given a reasonable amount of time off during their shift to investigate and process grievances receiving permission of the Chief of Police.⁸

E. January 4, 2002, Order Restricting Union Activity During Working Hours

On January 4, 2002, Chief Renico issued an order to Nelson and the Union's executive board, which reads:⁹

Recently, the POAM has filed numerous grievances regarding imposed discipline and overtime.

In the case of the grievances filed over the imposed discipline, considerable time was apparently spent by union representatives reviewing the "Notices of Possible Discipline" and preparing responses. Additional paperwork has been filed regarding the two disciplinary cases.

⁸Article IX, Section 9.2.

⁹The order issued by Chief Renico on January 4, 2002, is nearly identical to the order that he issued after a grievance was filed in 1998.

I have reviewed your productivity statistics for the year and I am not impressed with what you have accomplished or, more accurately, not accomplished. I understand you labor under the philosophy that *Forward to Basics* is nothing more than painting fences and planting flowers. I sense your union activities are taking time away from your first job – police officer.

Therefore, effective immediately, you will be given a reasonable amount of time off from your shift to investigate and process grievances, only after receiving my permission. You will first obtain permission from your shift supervisor and your division commander before contacting me.

Additionally, you must obtain my permission through the chain of command to conduct any other type of union business on department time. The only exception will be when contract negotiations are scheduled. Sergeants are not authorized to give anyone permission to leave their assigned duties to conduct union business.

After normal duty hours, Lt. Larsen is available by pager. Once you have received his permission to contact me, you may reach me by pager as well. If you are unable to reach me for some reason and you decide to conduct union business while on duty, you should be prepared to explain the exigency of the situation and why it couldn't wait until permission could be obtained, presumably the next business day.

The department is under no obligation to provide you or any other members of the union board with the blanket opportunity to act on behalf of the union for any reason at any time while you are on duty. The contract is very clear and we will abide by the contract.

This is a direct order and extends to all members of the POAM Executive board.

Chief Renico offered several reasons for issuing the order. First, according to Chief Renico, while preparing the Department's annual report, he reviewed monthly productivity reports and noticed that Officer Nelson had not made any traffic stops for three months – January, July and September 2001 – and that his production was well below average. Chief Renico also testified that Officer Nelson's "self-initiated activity" was also well below the average for other officers.¹⁰ Second, command officers had reported to him that Officer Nelson was spending an inordinate amount of time in Detective Federspiel's office on the telephone and using the photocopier machine, although his police-related duties did not require him to make a large number of photocopies. Third, Officer Nelson had spent an extensive amount of time preparing a response to two relatively minor discipline cases."

According to Officer Nelson, the Department has an unwritten quota of two traffic stops per day and although he did not know what his average was, he had been asked to increase his stops and he has complied with the request. Officer Nelson testified that Chief Renico had never

¹⁰"Self-initiated activity" might involve sending a letter to a homeowner after observing an open garage.

brought to his attention that he did not make any traffic stops for three months in 2001, and all of his performance evaluations had been good. According to Officer Nelson, although Chief Renico believed that he was opposed to the community-policing program (*Forward to Basics*), he was its top producer.

On January 7, 2002, a few days after the unfair labor practice charge was filed, Officer Nelson met with bargaining unit member Stinson. Nelson told him that he felt empowered after filing grievances and the charge, although he feared retaliation and knew that his job was “shot.” Officer Nelson compared himself to David and to Chief Renico as Goliath because Chief Renico had the power to run him into the ground.

V. Conclusions of Law

A. Standard of Review

An employee may not be discharged or otherwise discriminated against for attempting in good faith to enforce a right claimed under a collective bargaining agreement. An employee’s use of the grievance procedure constitutes protected concerted activity. *MERC v. Reeths-Puffer School District*, 391 Mich 253, 265-66 (1974). It is a violation of PERA for an employer to threaten a union official regarding the exercise of protected activity. See e.g. *Algonac Community Schools*, 1991 MERC Lab Op 192, 195; *Genesee County*, 1984 MERC Lab Op 383. Although an employer is not restricted by PERA from criticizing the union's grievances, its motives, or the ability of its officers, it cannot lawfully threaten, either expressly or impliedly, to penalize employees for filing grievances or for the exercise of other protected activity. *City of Lincoln Park*, 1983 MERC Lab Op 362. It is the chilling effect of a threat and not its subjective intent that PERA was created to reach. *University of Michigan*, 1990 MERC Lab Op 272, aff'd Court of Appeals, Dkt No. 128678 (7/16/92, unpublished). Remarks must be analyzed in light of the context in which they occurred, as well as to their content, to determine whether they constituted an implied or express threat. *New Haven Community Schools*, 1990 MERC Lab Op 167, 179.

When determining whether an employer has engaged in unlawful activity, the totality of the circumstances surrounding the action will be examined. *North Central Community Health Services*, 1998 MERC Lab Op 427; *Residential Systems*, 1991 MERC Lab Op 394 406. To determine whether an employer’s statements constitute an implied or express threat both the content and context of the remarks must be analyzed. *New Haven Community Schools*, 1990 MERC Lab Op 167, 179. A violation of Section 10(1)(a) does not depend upon the employer’s motive, or on whether the employee would actually be coerced. The standard applied is whether a reasonable employee would interpret the statement as a threat. *City of Greenville*, 2001 MERC Lab Op 55.

The Union claims that the statements made by Chief Renico on September 7, November 3, December 12 and December 18 interfered with, and restrained not only union officials, but the

entire membership in the exercise of their rights guaranteed under Section 9 of PERA. The Union also claims that the Employer committed an unfair labor practice for failing to comply with an order requiring direct permission be obtained from Chief Renico before conducting union business during working hours.

B. Statements Made by Chief Renico on September 7, 2001

The Union claims that, in violation of Section 10(1)(a) of PERA, Chief Renico threatened Officer Nelson and Detective Federspiel with physical harm by telling them that he had thoughts of killing both of them and burying their bodies where no one could find them, just like was done to Hoffa. The Employer emphatically denies that Chief Renico made a death threat, mentioned Hoffa, or threatened to kill Nelson and Federspiel, even in a joking manner.

The Employer argues that Chief Renico, highly regarded in the law enforcement community, provided credible testimony throughout these proceedings while the testimony presented by the Union was disingenuous at best and is completely fabricated. It claims that Officer Nelson's and Federspiel's testimony is nothing more than a sensationalized fallacy and they used these proceedings to relay their paranoid delusions of persecution at the hands of Chief Renico who, allegedly, is not only tyrannical, but also homicidal.

The Employer contends that Nelson and Federspiel's testimony should be viewed with skepticism because that they have a financial interest in the outcome; did not immediately report the alleged death threat; and were unable to keep their stories straight regarding Chief's Renico alleged statements. The Employer also claims that the powerful medications that Officer Nelson is taking further underscore his grasp of reality. The Employer argues that Officer Nelson and Detective Federspiel's stories do not ring true because while claiming that they were fearful for their jobs and physical safety, Nelson admitted that he initially took Chief's Renico statement as a joke, but later tried to retreat from his testimony by calling it a sick joke, but a joke nonetheless. Moreover, according to the Employer, Officer Nelson, while claiming that he was stunned by the death threat and knew it was serious, nevertheless attempted to continue his conversation about restoring Brooks vacation time. The Employer points out that Officer Nelson and Detective Federspiel continued to meet with Chief Renico to address and settle grievance issues and even socialized with him during a Christmas party at Federspiel's home.

I disagree with the Employer's characterization of the September 7 events as a figment of Nelson and Federspiel's imagination. Although they did not give exact versions of what occurred during the meeting and, at times, testified inconsistently about event that occurred after the meeting and who and when they reported the alleged threat, I find that the inconsistencies it did not significantly alter the generally corroborative nature of what occurred during the September 7 meeting. I find that their testimony about statements made during the meeting to be far more credible than Chief Renico's blanket denial that he made any of the statements they attributed to

him. Chief Renico claimed silence during the meeting belies his self-described image as a **Arough talker@** and his reputation for losing his temper, blowing up and blurting out things, that he does not really believe, in the heat of the moment, as described by Lieutenant Grauf and Chief Renico's secretary, Karen Tessin.

The Employer would have this tribunal believe that during the September 7 meeting, Chief Renico only said, **AI know@** in response to Detective Federspiel's attempt to calm him down by telling him that they were just the messengers. If Chief Renico, admittedly angry and upset, had not make any threatening statements, it follows that there would have been no need for Detective Federspiel to intercede to defuse his rage by reminding him that they were just the messengers.

I observed the demeanor of Officer Nelson and Detective Federspiel and neither appeared to be testifying about events that never happened. Nor did I get a sense that Officer Nelson's memory was affected by medication. Rather, he appeared to be genuinely disturbed by Chief Renico's conduct. I also observed Chief Renico's demeanor. He was red-faced throughout both Nelson's testimony and his own, and while Officer Nelson was on the testifying, Chief Renico often made menacing stares at him. I find that Chief Renico was not a credible witness regarding what transpired during the September 7 meeting. In making my credibility finding, I am mindful of the Employer's claim that Officer Nelson and Detective Federspiel should not be believed because they have filed civil litigation against Chief Renico and, therefore, have a financial interest in the outcome of this case. I found nothing on the record or in their demeanor to draw such a conclusion.

However, I agree with the Employer's assertion that Chief Renico's statement to Officer Nelson and Detective Federspiel that he had **Athoughts of killing both of them and burying their bodies where no one could find them, just like was done to Hoffa,@** was a spontaneous outburst made during an informal grievance meeting. The Commission has long recognized that in the course of collective bargaining and grievance administration, tempers may become heated and harsh words may be exchanged and spontaneous outbursts made in this context, without more, are protected by PERA. *Baldwin Community Schools*, 1986 MERC Lab Op 513, 524. The Commission has reviewed many cases where employees and employers agents have made threatening comments, such as calling an employee a **Aboy@** and telling him he would **Apick lead out of his ass@** (*City of Riverview*, 2001 MERC Lab Op 354, 356; **Ayou should be@afraid to file grievances@** and **AI've got a lot of bullets in my gun; I'd have to kill them all@** (*City of Ferndale*, 1998 MERC Lab Op 274, 276); calling a superintendent a liar and threatening to hit or punch him (*Unionville-Sebewaing Schools*, 1981 MERC Lab Op 932, 934).

In this case, however, there is more. After Chief Renico's **Athoughts of killing@** outburst, he calmed down and told them that because they were just the messengers, he would not kill them and while escorting them to the door, balanced his hands like a scale and said, **there's a price to pay for when you come in here, you have to weigh the price to see if it's worth the price.@** Charging Party asserts that this statement was a threat of retaliation. Although the Employer claims that Chief

Renico did not make the statement, it offers that he had used the phrase in a non-threatening context during a conversation with Nelson concerning pressures he was facing in his position as union president. I do not find the Employer's denial persuasive.

I that find Chief Renico's Aprice to pay@statement, coupled with his spontaneous outburst, would convey to a reasonable person that if grievance matters were brought to his attention, he would retaliate against them. Moreover, the Employer has promulgated a policy that prohibits the use of offensive and threatening language in the workplace and enforced the policy by giving Office Reif the option of retiring or being discharged for using the word "nigger" in an official document. I find that statements made by Chief Renico on September 7, 2001, have no place in the work place and violated Section 10(1)(a) of PERA.

Cf. Town & Country Supermarkets, 340 NLRB No. 172 (1/14/2004) (I am going to kick your ass and I am not afraid of you); and *Valley Slurry Seal Co.*, 2003 NLRB Lexis 792 (12/12/2003) (if that asshole puts any more shit on my windshield, I'm going to kick his ass). In both cases, the NLRB found that the statements constituted unlawful coercive conduct that violated Section 7 of the National Labor Relation Act.

C. Statements Made By Chief Renico November 3, 2001

The Union argues that during a November 3, 2001 staff meeting, attended by members of the Employer's command staff - sergeants and lieutenants. Chief Renico made a death threat against Officer Nelson and another officer. Even if this were true, the Union offered no evidence that the meeting was attended by any of its members or that they were engaged in protected activity. Just as the Commission cannot be put in a position of policing statements made during the course of collective bargaining negotiations or grievance meetings that may be offensive, it clearly would be inappropriate for it to police statements made outside of this context. See *City of Riverview*, 2001 MERC Lab Op 354; *City of Saginaw (Police Dept.)*, 1986 MERC Lab Op 513. Otherwise, the Commission could be called upon to analyze statements made by public employees and public employers anywhere (bars, churches, at home) and in any context to determine whether a violation of PERA occurred. Clearly, this was not the intention of the legislature.

I, therefore, find that, even if threatening comments were by Chief Renico during the command officer's staff meeting, the Employer did not violate Section 10(1)(a) of PERA.

D. Statements Made by Chief Renico on December 12, 2001

The Union claims that during the December 12, 2001, meeting between Chief Renico and Officer Nelson, that Nelson clandestinely tape-recorded, Chief Renico used profane and threatening language to repeatedly demonstrate how he would retaliate against the Union if a

grievance involving standby pay were filed. The Employer does not deny that Chief Renico made the tape-recorded statements. Instead, it claims that the majority of Chief Renico's comments were expressions of displeasure made during an informal grievance meeting that are protected because they were simply workplace colloquialisms, and were evidence of a permissible intention to enforce a legitimate contractual right.

Here, Chief Renico's comments, admittedly made during a meeting to informally resolve a potential grievance involving overtime pay, went past expressions of opinions or employee criticism. *City of Lincoln Park, supra*. They were direct threats of action that the Employer would take if employees filed a grievance. Chief Renico repeatedly said that he would retaliate by issuing a direct order requiring employees to report to work during standby time if they filed a grievance. He used such threatening statements as, "I'm going to give an order, a direct order, they're going to report here in uniform on stand-by. I'll pay them then," "But if push come to shove and those two lads want to push the issue, let them push. But they're going to get a lot of folks pissed at them. There will be a lot of folks pissed at them, support them, I don't care," and "I'll have the change in subpoenas for a month. Then they want to play fuck around, I'll play fuck around right back." Cf. *Antrim-Kalkaska Community Mental Health Services*, 1994 MERC Lab Op 423; *Delhi Township*, 1986 MERC Lab Op 375; and *Holly Consolidated School District*, 1976 MERC Lab Op 375, where the employer linked or conditioned disciplinary action on the union's pursuit or continuation of a grievance.

Chief Renico's threatening comments do not, as the Employer urges, gain the Act's protection simply because he also used colorful language that may be considered workplace colloquialisms. I find that the comments were not merely rude, derogatory and harsh words such as those exchanged in *City of Riverview, supra*; *City of Portage, supra*; and *Unionville-Sebewaing Area Schools, supra*, but were clear expressions of Chief Renico's hostility towards the employees' legitimate use of the grievance procedure and constitute a direct threat to retaliate if a grievance were filed.

I also do not find, as the Employer suggests, that Chief Renico's statements were evidence of a permissible intention to enforce a legitimate contractual right and, therefore, no union animus can be inferred. Animus or motivation is not a necessary element of a 10(1)(a) violation. Proof of an employer's intent is a necessary element only of a violation of Section 10(1)(c). *City of Detroit Water & Sewerage Dept.*, 1993 MERC Lab Op 157, 167. The test is whether the conduct complained of is inherently destructive of important employee rights. *St. Clair County Intermediate School District*, 2001 MERC Lab Op 218; *City of Detroit (Fire Dept.)*, 1988 MERC Lab Op 561; *City of Detroit (Fire Dept.)*, 1982 MERC Lab Op 11220. See also *NLRB v. Erie Resistor Corp.*, 373 US 22, (1963).

The Employer also claims that the court time grievance meeting that Officer Nelson secretly tape recorded was orchestrated by Nelson and was designed to goad Chief Renico into losing his

temper so that his words could be captured on tape. I find no evidence on the record to support this assertion. During the meeting, Nelson explained that he had asked the officers to give their overtime slips to him so that he could be the one to discuss the issue with Chief Renico, but contrary to his request, they presented them to the Chief Renico directly. Officer Nelson testified credibly that he taped recorded the meeting because Chief Renico summoned him to the meeting from his road patrol duties, Detective Federspiel was not available to accompany him as a witness and to protect his safety and job security in view of Chief Renico's conduct on September 7. I listened to the tape and read the transcript and found nothing to suggest that Officer Nelson orchestrated the meeting or goaded Chief Renico into losing his temper.

E. Statements Made by Chief Renico on December 18, 2001

The Union claims that during the December 18, 2001 meeting, Chief Renico threatened retaliation against the entire bargaining unit if a member pursued a grievable issue concerning an overtime assignment. During the informal grievance meeting that Detective Federspiel secretly tape-recorded, Chief Renico told Detective Federspiel that if overtime became an issue, he would limit the number of officers on vacation to one per shift and that every action causes an equal opposite reaction. Blah, blah, blah, union physics.®

The Employer claims that Chief Renico's statements were not retaliatory in nature, but were merely evidence of the Employer's intention to enforce the plain terms of the collective bargaining agreement. I disagree. An employer may not threaten stricter enforcement of the contract, although enforcement of work rules may be within its exclusive control, in response to an employee's exercise of a right protected by Section 9. *New Haven Community Schools*, supra. Here the Employer clearly threatened to limit the number of officers on vacation if the overtime issue were pushed. Chief Renico's statements were a *quid pro quo* for the employees' insistence on engaging in protected, concerted activity. *Antrim-Kaklaska Community Mental Health*, 1994 MERC Lab Op 432; *Delhi Twp.*, 1986 MERC Lab Op 375; *Holly Area Cons. School Dist.*, 1976 MERC Lab Op 797.

The Union also claims that Chief Renico's threat to restrict Officer Nelson's union activity and to put him on a "short leash" violated PERA. The transcript and tape, which I listened to, shows that these comments were directed towards Nelson's alleged opposition to the community policing program and his alleged low productivity. I find that these comments, without more, made by Chief Renico in this context did not violate PERA. I also do not find that Chief Renico's boastful comment that he must have clouded Officer Nelson's vision by "spending too much time up his ass," while gross and detestable, violates PERA.

F. Chief Renico's January 4, 2002 Memorandum Restricting Union Activity

The Union alleges that by issuing a January 4, 2002 order, the Employer interfered with, restrained and coerced its members for engaging in protected, concerted activity. According to the Union, the order contained an implied, if not a direct threat of discipline if union representatives did not first obtain Chief Renico's permission before conducting union business during working hours.

The Employer makes several arguments. First, citing *City of Grand Rapids*, 1998 MERC Lab Op 703, it claims that the mere fact that a union member is adversely affected after engaging in protected activity is insufficient to demonstrate anti-union animus; Nelson's union activity had no bearing on Chief Renico's decision to issue the memorandum of January 4, 2002; and the memorandum is not considered discipline and was not issued on a whim, but after a careful review of department productivity standards. Additionally, the Employer argues that the restrictive order was not retaliatory or discriminatory, but rather an intention to enforce the plain terms of the parties' collective bargaining agreement and any evidence of retaliation or discrimination is undercut by the fact that in 1998, Nelson was issued a nearly identical order regarding performing union business during working hours.

I find no merit to any of the Employer arguments. The record demonstrates that the January 4, 2002, memorandum was a follow-up to Chief Renico's statement to Detective Federspiel on December 18, 2001, a day after several grievances were filed, to put Nelson on a "short leash." The memorandum even makes express reference to numerous grievances that were recently filed by Charging Party.

The Employer seeks to convince this tribunal that Nelson needed to be placed on a "short leash" because he was spending too much time conducting union business and that his productivity was suffering. According to Chief Renico, he had been told by several command officers on numerous occasions that Nelson was spending an inordinate amount of time in the office and that after reviewing Nelson's productivity reports, he noticed that he had a "three-month" period when he made no traffic stops.

I disagree with the Employer's assertions. By stating that Officer Nelson did not make any traffic stops during a "three-month period," the Employer implies that there was a recent drop in Nelson's traffic stops. It fails to mention that the three months that Officer Nelson did not make any stops were in January, July and September 2001. The latest month, September 2001, was more than three months before the order was issued, but just over two weeks after several grievances were filed. If as the Employer argues, the order was issued to address a reduction in Nelson's productivity, it is reasonable to conclude that it would have been issued after one of the "numerous occasions" that command officers told Chief Renico that Nelson was spending too much time in Detective Federspiel's office, or shortly after September 2001, the last month that Nelson did not make any stops. It is more likely that, as Officer Nelson testified, that he had been asked to

increase his traffic stops and he had complied with that request.

I find that Officer Nelson's failure to make any traffic stops for three months in 2001 and the amount of time that he allegedly spent in the office did not become an issue until the day after grievances were filed for the first time since 1998. If, as the Employer argues, the order were issued to address Nelson's low productivity, it does not explain why the order was extended to all members of the Union's executive board. Moreover, Officer Nelson's testimony that he has always received good evaluations was not refuted.

Chief Renico admits that his response to grievances being filed in December 2001 was the same as his reaction after a grievance was filed in 1998. Nelson was put on a short leash. Contrary to the Employer's suggestion, the similarity in Chief Renico's actions after grievances were filed in 1998 and 2001, bolsters, rather than undercuts, evidence of a discriminatory motivation.

I also find that the January 4, 2002 order does not, as the Employer contends, represent an intention to enforce the plain terms of the parties' collective bargaining agreement. The order is far more restrictive than the plain language of Article IX, Section 9.2, which only states that union representatives will be given a reasonable amount of time off during their shift to investigate and process grievances after receiving the police chief's permission. I find that the stricter requirement is a discriminatory rule that restrains, coerces, and interferes with the rights of bargaining unit members to engage in rights guaranteed by Section 9. *University of Michigan, supra.*

I have carefully considered all other arguments made by the parties and conclude that they do not warrant a change in the result. Included is the Employer's assertion that Chief Renico's alleged statements did not interfere with the Union's protected rights since Officer Nelson and Detective Federspiel continued to meet with him during the informal grievance process, filed written grievances when the grievances were not informally resolved, and continued to engage in social activities with Chief Renico by inviting him to a Christmas party. These arguments are not relevant to the alleged unfair labor practice in this case. As noted above, a violation of Section 10(1)(a) does not depend upon whether an employer is actually coerced. The test is whether a reasonable person would interpret the statements as threats. *City of Greenville, supra.*

Based on the above findings of fact and conclusions of law, I recommend that the Commission issue the order set forth below:

Recommended Order

The unfair labor charge filed by the Saginaw Township against the Police Officers Association of Michigan is dismissed.

Respondent Saginaw Township, its officers and agents shall:

1. Cease and desist from interfering with, restraining or coercing employees by threatening physical harm and telling them that there is a price to pay for filing grievances or otherwise exercising their right to engage in concerted protected activities guaranteed by Section 9 of PERA.
2. Cease and desist from interfering with, restraining or coercing employees by threatening stricter enforcement of the parties' collective bargaining agreement for filing grievances or otherwise exercising their right to engage in concerted protected activities guaranteed by Section 9 of PERA.
3. Cease and desist from interfering with, restraining or coercing union officers by imposing tighter restrictions for filing grievance or exercising their right to engage in concerted protected activities guaranteed by Section 9 of PERA.
4. Insure that all employees are free to engage in lawful, concerted activity through representatives of their choice for the purpose of collective bargaining or other mutual aid or protection as provided in Section 9 of the Public Employment Relations Act.
5. Post, for thirty consecutive days, the attached notice to employees in conspicuous places on Respondent's premises, including places where notices to employees are customarily posted.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated: _____

NOTICE TO EMPLOYEES

AFTER A PUBLIC HEARING BEFORE THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION, SAGINAW TOWNSHIP HAS BEEN FOUND TO COMMIT AN UNFAIR LABOR PRACTICE IN VIOLATION OF THE MICHIGAN LABOR MEDIATION ACT. PURSUANT TO THE TERMS OF THE COMMISSION'S ORDER:

WE HEREBY NOTIFY OUR EMPLOYEES THAT

WE WILL NOT interfere with, restrain or coerce our employees by threatening physical harm and telling them that there is a price to pay for exercising their right to engage in concerted, protected activities guaranteed by Section 9 of PERA.

WE WILL NOT interfere with, restrain or coerce our employees by threatening stricter enforcement of the parties' collective bargaining agreement for filing grievances or otherwise exercising their right to engage in concerted, protected activities guaranteed by Section 9 of PERA.

WE WILL NOT interfere with, restrain or coerce our employees' union officers by imposing tighter restrictions upon them for filing grievances or otherwise exercising their right to engage in concerted, protected activities guaranteed by Section 9 of PERA.

WE WILL insure that all employees are free to engage in lawful, concerted activity through representatives of their choice for the purpose of collective bargaining or other mutual aid or protection as provided in Section 9 of the Public Employment Relations Act.

SAGINAW TOWNSHIP

BY: _____

Dated: _____