STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MICHIGAN AFSCME COUNCIL 25,
Labor Organization-Respondent

Case No. CU08 H-041

-and-

CITY OF BENTON HARBOR,
Public Employer-Charging Party.
_____/

APPEARANCES:

Miller Cohen, P.L.C., by Bruce A. Miller, Esq., for Respondent

Tall & Tall, by Charlette Pugh Tall, Esq., for Charging Party

DECISION AND ORDER

On December 30, 2008, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order 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 any 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

_____
Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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

In the Matter of:

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Charlette Pugh Tall, for Public Employer-Charging Party

Bruce A. Miller, for Labor Organization-Respondent

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON SUMMARY DISPOSITION

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to Doyle O'Connor, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charge and Allegations of Fact:

On August 18, 2008, a Charge was filed in this matter asserting that AFSCME Council 25 the (Union) violated the Act, when the Union Representative cursed and acted in a hostile and menacing manner towards the City Manager during a meeting to discuss employee contributions towards health insurance to avoid lay-offs, allegedly in violation of the collective bargaining obligations of the parties. Additionally, it was alleged that the Union representative threatened to haul the Employer into court. Pursuant to Commission Rule 423.165(2)(d), the Charging Party was ordered to show cause why the Charge should not be dismissed for failure to state a claim upon which relief can be granted. A timely response was filed in which the Employer reiterated the assertion that the use of profanity, threats of litigation, and the Union's alleged failure to present certain proposals by the Employer to its own membership should be found to violate the Act.

Discussion and Conclusions of Law:

The allegations in the charge, as supplemented by the response to the order to show cause, fail to assert violations of the Act. The use of coarse language in a bargaining setting,

while perhaps uncivil and potentially ill-advised or counterproductive, does not violate the Act. In a labor relations setting, each party has "license to use intemperate, abusive, or insulting language without fear of restraint or penalty if it believes such rhetoric to be an effective means to make its point." *Letter Carriers v Austin*, 418 U.S. 264, 283 (1974).1 It is not uncommon for grievance or bargaining conferences to become heated, for persons on either side to lose their tempers, and for harsh words to be exchanged. MERC has long held that such spontaneous outbursts in this context are protected by PERA. *Baldwin Community Schs*, 1986 MERC Lab Op 513, 524. This acceptance reflects a broad societal recognition that labor disputes are heated affairs that may abound with rough language and intemperate statements. *Jolliff v NLRB*, 513 F3d 600 (CA 6, 2008).

The Employer fails to identify any theory under which a threat to bring litigation against the opposing side in a bargaining setting would violate the Act. The Employer's complaint regarding the alleged failure of the Union to present a particular Employer proposal, to which the Union had apparently not agreed, to its own membership does not state a violation of the Act, as the method and timing as well as the decision of whether or not to hold a Union ratification vote is an internal Union matter not regulated by the Act. *City of Lansing*, 1987 MERC Lab Op 701; *City of Detroit*, 1978 MERC Lab Op 519.

The charge fails to state a claim upon which relief could be granted and is therefore subject to dismissal under Commission Rule R423.165 (2)(d).

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Doyle O'Connor
Administrative Law Judge
State Office of Administrative Hearings & Rules

Dated: _____

1 Given the similarity in the statutes governing labor relations in its various sectors, the Commission is often guided by decisions interpreting Federal labor law. *MERC* v *Reeths-Puffer Sch Dist*, 391 Mich 253, 260; 215 NW2d 672 (1974); *Detroit Police Officers Ass'n* v *Detroit*, 391 Mich 44; 214 NW2d 803 (1974); and *U of M Regents* v *MERC*, 95 Mich App 482, 489 (1980).