STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SAULT STE. MARIE EDUCATION ASSOCIATION,
Labor Organization-Respondent,

- and - Case No. CU07 F-029

SAULT STE. MARIE AREA PUBLIC SCHOOLS,
Public Employer-Charging Party.
_____/

APPEARANCES:

Thrun Law Firm, P.C., by Donald J. Bonato, Esq., for Charging Party

DECISION AND ORDER

On August 3, 2007, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was not engaging in certain unfair labor practices, and recommending that the Commission dismiss the charges and complaint as being without merit.

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: _____

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_____/

APPEARANCES:

Donald J. Bonato, for Charging Party

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) for the Michigan Employment Relations Commission. Based upon the entire record, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and Findings of Fact:

On June 18, 2007, a Charge was filed in this matter asserting that the Respondent Union, at a public meeting, invited School Board members to attend contract negotiation sessions. The Charge asserted that such conduct violates Section 10(3)(a)(ii). There was no assertion that the Union's conduct was coercive or threatening. There was no assertion that any school board member acted on the invitation.

The Charge additionally asserts that the Union's conduct in inviting participation by members of the public board was contrary to ground rules agreed upon between the parties, and, therefore, constituted a refusal to bargain in good faith in violation of Section 10(3)(c). The ground rules were attached to the charge form and those rules list the members of the respective bargaining teams. The ground rules do not indicate that the composition of the teams cannot change from the individuals initially identified by each side. The Charge asserts that the complained of conduct violated ground rules 4, 6 and 10. Ground rules 4 and 6 identify the members of the respective bargaining teams. Ground rule 10 has the parties agreeing to act in a professional manner and agreeing to "keep discussion of specific issues within their respective teams and boards." The Charge

does not factually assert that the Respondent discussed "specific issues" outside the respective bargaining teams and boards.

Pursuant to R 423.165(2)(d), 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.

Discussion and Conclusions of Law:

The factual allegations made in the Charge and in the response to the order are accepted, for purposes of this decision, as true. The first part of the Charge asserts that a Union officer invited elected members of the school board to play a direct role in bargaining and encouraged them to join the Employer's bargaining team. There is no allegation that the invitation was coercive, or that it was acted upon. This portion of the charge fails to state a claim as there are no facts alleged which, if proven, could support a conclusion that such an invitation constituted restraint or coercion of the Employer regarding its selection of representatives, contrary to Section 10(3)(a)(ii). While an effort by an employer to bypass a union to deal directly with employees seriously undermines the authority of the union as bargaining representative, the converse is not true. The governing body of a public employer does not stand in the same relation to its bargaining team as the employees do to their legally recognized exclusive representative. An employer's bargaining team act as mere agents for the governing body and the governing body may at any time choose to bargain directly, rather than through its negotiating team. *City of Dearborn,* 1986 MERC Lab Op 538, 541. Because it is a board which has the ultimate authority to bargain on behalf of such an employer, union efforts to bargain directly with a board do not seriously undermine the employer's authority and are not unlawful. *City of Dearborn, supra.*

Moreover, the described conduct would appear to be protected concerted activity, as well as a Constitutionally protected effort to petition a government entity for redress of grievances, and therefore beyond the authority of this agency to regulate. See, *Utility Workers Union of America, Local 482*, 20 MPER___ (CU07 B-010, June 21, 2007). Such petitioning speech need not even be on a matter of public interest, although exhorting public officials to play a more direct role in bargaining would seem a matter of public interest. *Gable v Lewis,* 201 F2d 769 (2000).

Neither the Charge nor the response to the order to show cause pointed to any violation of the agreed-upon ground rules which had any claimed direct impact on the bargaining process. At most, it is asserted that Respondent "invited" the elected school board members to join the Employer's bargaining team. There is no assertion that the invitation was acted upon. Likewise, it is unclear how it would have been a violation by the Union of the ground rules if a member of the Employer's elected board had acted on the invitation and sought to join the Employer's bargaining team. Even if a violation of bargaining ground rules might constitute a violation of the Act, it is clear that a mere isolated violation of agreed upon ground rules, such as alleged here, would not be unlawful. *Grand Rapids Public Museum,* 2002 MERC Lab Op 222.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor
Administrative Law Judge

Dated:_____