

**STATE OF MICHIGAN**  
**MICHIGAN EMPLOYMENT RELATIONS COMMISSION**

In the matter of Act 312 Arbitration between:

CITY OF HIGHLAND PARK,

Case No. D00 A-021

Employer,

Arbitration Panel:

and

Jerold Lax, Chairperson  
Frank Klik, Union Delegate  
Janet Lazar, Employer Delegate

POLICE OFFICERS LABOR COUNCIL

Union.

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**Appearances:**

For the Employer:

For the Union:

John Entenman  
Dykema Gossett  
400 Renaissance Center  
Detroit, MI 48243

Peter P. Sudnick  
675 E. Big Beaver Rd.  
Troy, MI 48083

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**OPINION AND AWARD**

**I. Factual background**

This arbitration proceeding under Public Act 312 of 1969 (MCLA 423.231 et seq) involves the City of Highland Park (hereinafter "City") and Police Officers Labor Council (hereinafter "Union"), which represents City Public Safety Department employees in a unit defined in the Act 312 petition as "all PSO Personnel, Excluding Director, Assistant Director,

Deputy Directors, Inspectors and all Civilian and Auxiliary Personnel.” At the time of the filing of the petition, the unit contained some 75 employees, but this number has now been reduced to some 20 employees, largely as a result of the City contracting with other governmental agencies for the provision of police services. The propriety of this contracting has been the subject of judicial proceedings, but will not be dealt with in this Act 312 award.

The last collective bargaining agreement between the parties expired June 30, 2000. The parties negotiated toward a new agreement, but while they agreed on a 3.5% wage increase for the 2000-2001 year and on a number of other issues, eight issues remained unresolved, and the Union filed its petition for arbitration on June 12, 2001. Jerold Lax was appointed impartial chairperson of the arbitration panel on December 20, 2001. In initial prehearing conferences, it was agreed that further negotiations between the parties might be productive in resolving outstanding issues. After a subsequent report by the parties that no agreement had been reached with regard to wages for the second and third years of a new 3-year contract and with regard to the issue of the payout of unused furlough time and the inclusion of such payment in final average compensation for purposes of calculating pension benefits, a formal hearing was held on September 4, 2003 to consider evidence and argument on these issues, which were agreed to be economic. Although the parties were unable to reach agreement on the identification of comparable communities, with the City contending that no community was comparable to Highland Park because of its economic condition, each party made reference to other communities with regard to the matter of inclusion of payout for accumulated furlough time in final average compensation.

After the close of the hearing, the City moved to reopen the record to receive additional items of documentary evidence. The panel determined that good cause did not

exist for reopening the record, but did accept a corrected statement concerning the calculation of pension benefits in another community, since this correction had been contemplated by the parties during the hearing.

The following decision summarizes the conclusions of the panel, with concurrences and dissents appropriately noted. All panel members are in agreement that this award shall be regarded as timely under Act 312. In rendering this award, the panel has adhered to the directive of Section 9 of Act 312 that it base its findings, opinion and order upon the following factors, as applicable.

- (1) The lawful authority of the employer;
- (2) Stipulations of the parties;
- (3) The interest and welfare of the public and the financial ability of the unit of government to meet those costs;
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
- (5) The average consumer prices for goods and services, commonly known as the cost of living;
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public sector or in private employment.

Further, the panel has adhered to the directive of Section 8 of the statute that it adopt the best offer of settlement which, in the opinion of the panel, more nearly complies with the applicable factors prescribed in Section 9. The panel notes, however, that with regard to any particular issue, each Section 9 factor need not be accorded equal weight. *City of Detroit v Detroit Police Officers Association*, 408 Mich 410 (1980).

II. Resolution of disputed issues

(1) Wages

The City proposes the following wage increases, each increase to take effect as of the indicated date:

7/1/01	0%
7/1/02	A lump sum payment (not part of base salary) for each employee actively employed (i.e. not on disciplinary suspension leading to termination) as of 6/30/03, or who became a regular retiree during the period 7/1/02 – 6/30/03, of 1% of said employee's W-2 earnings for calendar 2002.

The Union proposes the following increases for the comparable periods:

7/1/01	0%
7/1/02	0%

The Union has indicated its willingness to accept the City's wage proposal, and it is the conclusion of the panel that the City's proposal should therefore be adopted. All concur.

(2) Payout of unused furlough time; inclusion of payout in FAC

The City proposes that a Section 9 be added to Article 19 of the contract as follows:

Section 9. Effective July 1, 2000, upon termination for any reason other than discharge for just cause, an employee shall be permitted to extend his final payroll date by his number of accumulated furlough days, with a maximum of 60 furlough

days, such that, as of his final payroll date, he has no further such days. There shall be no "earning" of more furlough, sick, or personal days, or other benefits while the employee is exhausting his accumulated furlough.

The Union proposes that Section 4 of Article 19, which read as follows in the expired agreement,

Seniority shall govern the choice of vacation periods subject to reasonable scheduling requirements of the Highland Park Department of Public Safety, provided the senior employee makes his choice of furlough leave time on or before the end of the scheduling period. Employees can accumulate a maximum of 30 furlough days (1 – 10 years), maximum of 60 furlough days, (11 – 20 years). No more than two (2) officers assigned to a platoon or unit shall be allowed on furlough at any one time,

be amended to read:

Section 4. Seniority shall govern the choice of vacation periods subject to reasonable scheduling requirements of the Highland Park Department of Public Safety, provided the senior employee makes his choice of furlough leave time on or before the end of the scheduling period. Employees can accumulate a maximum of 30 furlough days (1-10) years), maximum of 60 furlough days (11-20) years). Upon separation from employment for any reason, unused furlough days shall be paid to the employee at straight time in accordance with the employee's current rate of pay. The furlough payout shall be included in the calculation of FAC for retirement purposes. In lieu of furlough payout, an employee may elect to extend his final payroll date by his number of accumulated furlough days. There shall be no earning of additional furlough days while the employee is exhausting accumulated days.

The Union's brief suggests that it may not have been the intent of the Union to propose deletion of the final sentence of former Section 4, but the panel's disposition of this issue is not dependent on the deletion.

The City argues that, particularly in light of the City's acknowledged precarious financial position, it would be inappropriate to adopt the Union's position, which the City

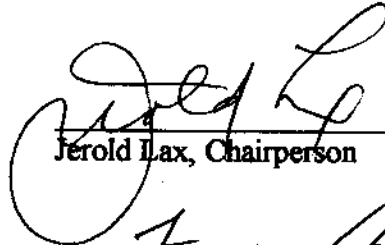
calculates would cost in excess of \$300,000 insofar as impact on pension costs is concerned. The City characterizes the Union's proposal as requesting a new benefit, while the Union-- although acknowledging that the expired contract is devoid of language expressly supporting the Union's proposal--argues vigorously that payout for unused furlough time and inclusion of such payout in the calculation of final average compensation is a well-established past practice which the City has unilaterally and inappropriately modified. In light of the adverse consequences to unit members of the City's financial condition, the Union argues that the panel should not deprive unit members of this benefit.

While the Union did present testimony from two witnesses to the effect that employees had received a cash payout for unused furlough time and that such payouts were taken into account in determining final average compensation, the majority of the panel is unpersuaded that his testimony is sufficient to overcome the language of the preexisting contract. The panel also notes that Employer Exhibit 8, a letter to the Union from the Municipal Employees' Retirement System of Michigan (MERS), which administers the City's pension system, suggests that payments such as payout for unused furlough are not regarded by MERS as "compensation." The MERS letter states that under Section 26(A) of the Plan Document "[c]ompensation does not include any remuneration or reimbursement not specifically described in this subsection or recognized by the board, such as...payments in consideration of unused sick leave...." While not excluding payment for unused furlough specifically, MERS would appear to exclude other similar payments, and the listed exclusions are only cited as examples.

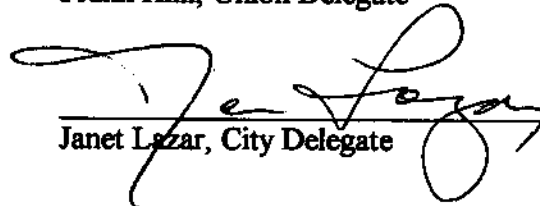
The conclusion that the Union's proposal does not represent an established past practice of the parties does not preclude the panel from adopting the proposal, and there can

be little doubt that the City's financial situation has had a significant adverse effect on unit members. Nonetheless, the majority of the panel concludes, based principally on the City's inability to pay, that the City's proposal on this issue should be adopted. Panel member Klik dissents.

This award is issued 12/12, 2003

  
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Jerold Lax, Chairperson

  
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Frank Klik, Union Delegate

  
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Janet Lazar, City Delegate