

STATE OF MICHIGAN
COURT OF APPEALS

LARRY KULHAVI, RONALD NAWROCKI,
EDWARD OLEKSIK, PAUL MISIEWICZ,
JENNIE C. ALE, ANNA AMEJKA, HELEN
BABIASZ, JOSEPH BAXTER, CLARA BELTZ,
LENORE E. BERLIN, JENNIE BIELECKI, VERA
BIERNACKI, JOHN BODZIAK, JOSEPH
BOLDYS, JOSEPH BRAKONIECKI, EMILY
CHOJNACKI, WILLIE COLEMAN, LILLIAN
CYBULSKI, BEN CZERNIAWSKI, JOHN
CZERNY, JOHN M. DALY, CHESTER DAVIS,
LOUISE DOBRZYSKI, WAYNE ELGIN,
CHESTER FIC, LUCILLE M. GLAZEWSKI,
THADDEUS GRABOWSKI, ARTHUR GREGORY,
CLARENCE GRZEGOWZEWSKI, CHESTER
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KANAR, MARY KENJORSKI, STANLEY
KMIEC, MARY KNUCKLES, RAYMOND S.
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EDWARD KOTULSKI, STALLA J.
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TILLIE KOWALSKI, REGINA KOZICKI,
RUSSELL KRAFT, JOAN KRESTON, LOTTIE
KRUEZ, JOHN KRZYCZKOWSKI, DONALD R.
KUDLA, FLORENTINE KUKLER, JOANNA
KULCHESKY, GERALD LABUDA, MARGARET
LASH, BERNARD W. LENDA, SHERMIE
LERCZAK, EDWARD LEWAND, ZIGMUND
LUBISZEWSKI, HELEN MACHOWSKI,
THEODORE MAJEWSKI, FRED MAKUSHIK,
ALEX MARCINKOWSKI, CHESLAWA
MATUSZAK, SOLOMON McCORMICK,
LEONARD MILES, DONALD H. MILEWSKI,
MARTHA MONVILLE, TED J. MORAWSKI,
LAWRENCE F. NAGEL, MARIE NAWROCKI,

UNPUBLISHED
May 24, 1996

* Circuit judge, sitting on the Court of Appeals by assignment.

BERNICE NICZAY, CASSIE NOWICKI,
ZIGMUND OZIMKOWSKI, SYLVIA
PACHOLEC, EDMUND PAGE, CHESTER
PIETRZAK, LEONARD PIOTROWSKI, ANNA
RATOWSKI, EDNA REDMAN, MARY H. REED,
TED RODGERS, CHESTER RUTKOWSKI,
HENRY RYANS, ANNE RYBICKI, VINCENT S.
SADZINSKI, GERMAINE G. SCHULTZ,
THEODORE SEJNOWSKI, WANDA SHERBA,
ALEXANDER SIEMIENSKI, HELEN L.
SIKORSKI, JOHN SITEK, JAMES SMITH,
GEORGE SMOLAREK, DONALD R. SOAVE,
LILLIAN STANCZYK, LEO STEMKOWSKI,
JULIA STUTZNER, STANLEY SULEK, PETER
SUPINA, STANLEY SUPINA, RICHARD
SWARTZ, HENRY B. SZALKA, THOMAS
SZCZEPANSKI, HENRY TEMPALSKI, MARIE
THOMAS, ELEANOR J. TRACZYNSKI,
ANGELINE UJENSKI, HELEN WALSON, JANE
WATROBSKI, JOHN C. WATSON, MARIE
WELENC, ARTHUR WIDZINSKI, E. WILSON,
WALLACE WILSON, HENRY WISNIEWSKI,
MILDRED WISNIEWSKI, JENNIE WOJCIK,
WALTER J. ZALESKI, JEAN M. ZALIWSKI,
WANDA ZALIWSKI, ANN ZOWIN, WANDA
ZUGAY, CLEMENS ZULINSKI, CHARLES
ZULKOWSKI and THEORDORE ZYLINSKI,

Plaintiff-Appellants,

v

CITY OF HAMTRACK, a Michigan Municipal
Corporation, and BOARD OF TRUSTEES OF THE
HAMTRAMCK POLICE AND FIRE PENSION
SYSTEM,,

Defendant-Appellees.

ELMER BIRKEL, MARK ABRAMS, ANNA
ADAMKIEWICZ, BYRON BATCHELOR,
VALENTINE BEDNARSKI, JOSEPH S. BERLIN,

No. 172005
LC No. 92-227143-CK

GERTRUDE BIELAK, ROSE BORKOWSKI,
ARTHUR BORUCKI, STELLA CHICHECKI,
EMILY CILVA, THEODORE DATKO, ARTHUR
DILLARD, LEONARD DUDZINSKI, HENRY
DUTKIEWICZ, JAMES J. DZIALAK, ANNA
DZIURDA, ANNE S. EWARD, DOMINIC FLIS,
JOHN REDERICK, ANN GERWATOWSKI,
JOSEPH J. HARJAY, MARY HENDRICK, VERNA
HOJNACKI, SAMUEL IAQUINTO, NORBERT
JABLONSKI, HENRY JABLYNSKI, FREDERICK
W. JAMES, CLARA D. JAMES, REGINA
JELONEK, EMIL JONES, MARY KALIN,
STANLEY KAMINSKI, SOPHIE
KARASZEWSKI, EDWARD A.KOWALSKI,
JOSEPH KRYSTAN, ISABELLE A. KUBIC,
IRENE KUCWAY, JEAN KULCZYCKI, EDWARD
LANG, IRENE LEWANDOWSKI, CLEMENTINE
LEWANDOWSKI, WILLIAM MACIEJKA,
HELEN MATKOWSKI, EMIL NIEMCHAK,
MARY NOWAKOWSKI, MARY OMELA, ROSE
MARIE PARUCH, MARY PAWENSKI, IDA B.
PERRY, ANTHONY J. PIECHOTA, LEONARD
PIETRZAK, EDWARD PODOLSKI, IRENE
PODOLSKI, STANLEY PUDLO, ANNA REPPKE,
HARRY ROGOWSKI, JULIUS SCHULTZ, ALAN
M. SHULGON, STANLEY SIDOR, MARY R.
SINGER, HELEN SKOWRONSKI, IRENE
SMITH, FRANK STOCK, VICTORIA SUDZINSKI,
BRONYE SUPINA, WILLIAM SZYPA, STELLA
TEMPLETON, HENRIETTA TROJNARSKI,
IRENE WATRBOSKI, JOHN E. WELLS, ARTHUR
WROBLEWSKI, GERALD J. ZALIWSKI and
ROBERT Z. ZALIWSKI,

Plaintiffs-Appellants,

v

CITY OF HAMTRAMCK, a Michigan Municipal
Corporation, and BOARD OF TRUSTEES OF THE
HAMTRAMCK POLICE AND FIRE PENSION
SYSTEM,

No.172006

L.C.No. 93-312422-ck

Defendants-Appellees.

Before: Bandstra, P.J., and Gribbs and Grathwohl*,

PER CURIAM.

In this consolidated appeal, plaintiffs appeal the trial court's grant of summary disposition against their claim for increased pension benefits. MCR 2.11(C)(10). We reverse.

Plaintiffs are retired police and firefighters, and their beneficiaries. They brought suit seeking inclusion of all applicable benefits in the calculation of their pension benefits, alleging that the city did not compute all forms of pay into their pensions as required by the city charter. Defendant's argued that "rate of 'pay'", the basis for computation of pensions, did not include fringe benefits. Both parties filed motions for summary disposition. After hearing arguments, the trial court specifically found that accumulated leave time offered to ranking officers, gun allowance, food and clothing allowance, and overtime could not be included as "pay" in pension calculations. The trial court did not state any findings regarding several other disputed items, but denied plaintiffs' motion and granted defendant's motion for summary disposition.

Summary disposition is properly granted when, except as to the amount of damages, there is no genuine issue of material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. MCR 2.116(C)(10). Courts are liberal in finding a genuine issue of material fact. *Meretta v Peach*, 195 Mich App 695, 697; 491 NW2d 278 (1992). Before judgment may be granted, the court must be satisfied that it is impossible for the claim to be supported by evidence at trial. *SSC Associates v General Retirement System*, 192 Mich App 360, 365; 480 NW2d 275 (1991). Summary disposition was improperly granted to defendants in this case.

Plaintiffs contend that numerous benefits should be included as part of their "rate of pay", including accumulated leave time for ranking police officers, sick leave incentive bonuses for firefighters, vacation pay, leave time, overtime, shift differential, cost of living allowance, personal leave time, and allowances for guns, clothing and food. Although listed in plaintiffs' complaint, the parties have stipulated that longevity and holiday pay are, in fact, included in the calculation of pension benefits. The other contested items will be discussed seriatim.

A panel of this Court previously determined, in a case similar to the one before us, that vacation pay, longevity pay, holiday pay, leave time, overtime, shift differential, cost of living allowance and personal leave time are normal payments made regularly in the course of work for regular work done, and should be included in pension calculations. *Gentile v City of Detroit*, 139 Mich App 608, 618-619; 362 NW2d 848 (1984). Although defendant urges us not to rely on *Gentile*, we find it to be on point. The *Gentile* panel found that "normal payments made regularly in the course of the plaintiffs' work for regular work done" should be included in pension calculations. To the extent that longevity

pay, holiday pay, vacation pay, leave time, overtime (whether mandatory or voluntary), shift differential, cost of living allowance and personal leave time “are normal payments made regularly in the course of plaintiffs’ work for regular work done” under the facts of this case, they should be included in defendant’s calculations. Each of these benefits enhances the “regular periodic salaries paid to employees based on their individual circumstances.” *Hay v Highland Park*, 134 Mich App 624, 636; 351 NW2d 622 (1984).

We reject defendant’s claim that the fringe benefits should not be included in pension calculations because the city does not deduct 5% from active employees to pay for them. *Banish v City of Hamtramck*, 9 Mich App 381, 392; 157 NW2d 445 (1968). Defendant also argues that the city has historically equated “rate of pay” with “base pay”, and relies heavily on “historical practice” as evidence that fringe benefits should not be included. We are not persuaded that the city’s long standing pattern of exclusions from pension calculations requires us to reach a different result. “The principle that a long-standing interpretation...is entitled to great weight does not control when the interpretation is clearly wrong.” *Gentile*, supra at 615, quoting *Schuhknecht v State Plumbing Board*, 277 Mich 183, 186-187; 269 NW 136 (1936).

As a general rule, bonus vacation time and sick leave are considered “bonus benefits for unusual situations and are not normal remuneration for normal work”. *Gentile*, supra at 619. However, plaintiffs contend that the accumulated leave time for ranking officers and sick leave incentive for firefighters at issue here are clearly intended as normal remuneration for normal work. They argue that the programs are designed to discourage employees from taking time off and to compensate for required attendance at activities outside their regular shift or added responsibilities due to the nature of their rank. Both programs, plaintiffs argue, give employees the option of collecting either additional leave time or, in effect, a cash bonus for doing “normal work”. To the extent plaintiffs’ arguments are factually supported, both plans are compensatory and should be included in pension calculations.

Gun, clothing, and food allowances are not part of an employee’s pay or compensation when they are a reimbursement of actual out of pocket expenses. *Gentile*, supra at 618, *Banish*, supra at 391. In this case, plaintiffs allege that the monthly allowances are provided regardless whether employees have purchased guns, clothing or food for use at work. To the extent that these allowances are designed to increase employees’ actual compensation rather than reimburse out of pocket expenditure, they should be included in pension calculations.

The trial court’s grant of summary disposition for defendant is reversed and this matter is remanded for fact-finding and further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Roman S. Gribbs

/s/ Casper O. Grathwohl