

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
BUREAU OF EMPLOYMENT RELATIONS

IN THE MATTER OF:

CLINTON COUNTY, PUBLIC EMPLOYER

-and-

CAPITAL CITY LABOR PROGRAM (CCOP), LABOR ORGANIZATION

MERC CASE NO.: 21-L-2246-CB

COMPULSORY ARBITRATION

Pursuant to Public Act 312 of 1969, as amended
[MCL 423.231, *et seq*]

Arbitration Panel

Chairman: Kenneth W. Zatkoff
Employer Delegate: Helen Mills
Union Delegate: Jeffrey Donahue

Advocates

Employer Advocate: Helen Mills
Union Advocate: Jeffrey Donahue

PETITION(S) FILED: March 30, 2022
PANEL CHAIR APPOINTED: April 18, 2022
SCHEDULING CONFERENCE HELD: May 2, 2022
HEARING DATE(S) HELD: September 21, 2022
AWARD ISSUED: December 5, 2022

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WITNESS LIST

The following witnesses testified before the Panel:

For the County:

1. Craig Longnecker – County Administrator
2. Sean Dush – Sheriff

For the Union:

1. Bradley Richman – Director of Operations of Capital City Labor Program

Also present:

1. Steven Bangs
2. Chad Karsten
3. David Pohl

EXHIBIT LIST

The parties submitted joint exhibits as well as direct and rebuttal exhibits at the beginning of the hearing. All exhibits were admitted into the record with the parties reserving the right to voice objections, if any in their post-hearing briefs.

List of exhibits are attached hereto as **Appendix A**.

1. INTRODUCTION AND BACKGROUND

Clinton County is located roughly in the middle of the State of Michigan just north of Lansing. The County has approximately eighty thousand (80,000) residents. The County houses the State's trial court system, funds the Clinton County Sheriff's Department and maintains other human services and economic development programs within the County. The court system and Sheriff's Department make up the majority of the County's general fund budget. The primary source of revenue for the County is property taxes. The Sheriff's Department has approximately thirteen (13) command deputies who are covered under a separate collective bargaining agreement. The correction deputies are also covered under a separate collective bargaining agreement. There are approximately sixteen (16) sheriff's deputies which are the subject of this case. There is also a separate 911 dispatchers unit. The remainder of the County's employees are non-union.

The collective bargaining agreement between Clinton County and the Capital City Labor Program Road Patrol Unit expired December 31, 2021. The parties were unsuccessful in negotiating a complete collective bargaining agreement and ultimately on March 30, 2022 the Union filed a Petition for Act 312 Arbitration. Kenneth W. Zatkoff was appointed as Panel Chair on April 18, 2022. Helen Mills was appointed as the County's delegate. Jefferey Donahue was appointed as the delegate on behalf of the Union.

A pre-hearing scheduling conference was conducted by phone on May 2, 2022. The Panel Chair issued a Pre-Hearing Statement on May 3, 2022. The parties initially had seventeen (17) outstanding issues in dispute. During the pendency of this matter, the issues were paired down to three (3) disputed items. The parties were able to agree on external comparables and stipulated that ability to pay would not be an issue in these proceedings. Miss Mills further indicated that while the County would not be arguing that it could not afford to pay, it would be providing

evidence that the County is a fiscally conservative community that carefully and prudently manages its resources to insure the County's financial stability to meet its obligations under the various collective bargaining agreements.

Last best offers in this case were submitted on August 15, 2022. The parties subsequently exchanged direct and rebuttal exhibits and the hearing in this matter was held at the Clinton County Administrative Building on September 21, 2022. The Chair received the parties' post-hearing briefs on November 11, 2022.

2. STATUTORY CRITERIA

Michigan Public Act #312 of 1969, as amended, requires that the Act #312 Arbitration Panel issues its award and base its findings, opinions and order on the following factors contained in section nine of the act:

Sec. 9.(1) If the parties have no collective bargaining agreement or the parties have an agreement and have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors:

- (a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay.
 - (i) The financial impact on the community of any award made by the arbitration panel.
 - (ii) The interests and welfare of the public.
 - (iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.
 - (iv) Any law of this state or any directive issued under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575, that places limitations on a unit of government's expenditures or revenue collection.

- (b) The lawful authority of the Township.
 - (c) Stipulations of the parties.
 - (d) Comparison of the wages, ours, 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 in bot of the following:
 - (i) Public employment in comparable communities.
 - (ii) Private employment in comparable communities.
 - (e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.
 - (f) The average consumer prices for goods and services, commonly known as the cost of living.
 - (g) 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.
 - (h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.
 - (i) Other factors that 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 service, or in private employment.
 - (j) If applicable, a written document with supplementary information relating to the financial position of the local unit of government that is filed with the arbitration panel by a financial review commission as authorized under the Michigan financial review commission act.
- (2) The arbitration panel shall give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence.

As required by statute, the Panel has carefully reviewed Clinton County's financial ability. It has also given careful consideration to all of the relevant statutory factors related to this case.

3. STIPULATIONS AND PRELIMINARY RULINGS

The parties stipulate to a successor contract effective January 1, 2022 through December 31, 2024. The parties also stipulate that the comparables and the ability to pay would not be an issue in this case. The parties stipulated that the three (3) issues before the Panel are economic. The parties also stipulate that all tentative agreements and any uncontested provision in the expired collective bargaining agreement are to be carried forward in the successor collective bargaining agreement. These tentative agreements are included herein as Union Exhibit 5 and are incorporated into this 312 Award per the parties' stipulation.

4. COMPARABLES

The following counties shall be considered comparable to the Clinton County:

Barry County
Bay County
Cass County
Eaton County
Grand Traverse County
Isabella County
Lenawee County
Midland County
St. Joseph County
Van Buren County

5. ISSUES BEFORE THE PANEL

a. Union Issue – Holidays (Economic)

Last Best Offer of the Union:

The Union proposes adding Christmas Eve day.

Last Best Offer of the Employer:

The Employer proposes status quo contract language.

Discussion

The Union proposes to add Christmas Eve day as a twelfth (12th) holiday for road patrol deputies. The Union agrees that an additional holiday is justified because deputies who are scheduled to work a holiday do not receive any type of premium pay. The Union points out that of the agreed to comparables, eight (8) have Christmas Eve as a holiday. Six (6) of the ten (10) comparables have more holidays than Clinton County. Finally, all of the external comparables pay their deputies at least time and one-half for working a holiday. This only happens for Clinton County deputies when they are working an overtime shift.

Deputies receive a single check for eleven (11) holidays in either late November or early December. Because deputies do not receive any premium if they are scheduled to work on the holiday, the Union maintains that an additional holiday will have minimal impact on the County.

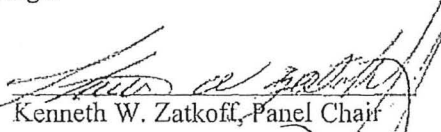
The County maintains that the number of holidays enjoyed by the bargaining unit is consistent with internal comparables. All command deputies are paid for the same eleven (11) holidays in the same fashion as the deputies. Corrections deputies also receive the same number of holidays. All of these employees are paid twelve (12) hours straight time for each listed holiday whether they work or not. The County points out that Clinton County sits in the middle of the pack among the external comparables and there is simply no justification for making any changes. Furthermore, internally all three (3) bargaining units within the Sheriff's Department have identical holiday provisions. Granting additional holidays to the road patrol would deteriorate the parity that currently exists between bargaining units.

A majority of the Panel believes that the applicable Section 9 factors justify the maintenance of the status quo on this issue. Accordingly, a majority of the Panel concludes that the County's last best offer should be adopted.


AWARD ON ISSUE 1 – HOLIDAYS

Employer proposes status quo contract language.

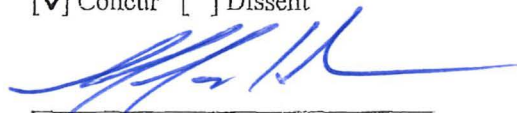
Date: 12-5-22


Kenneth W. Zatkoff, Panel Chair

Date: 12-6-22


Helen Mills, County Delegate
☒ Concur ☐ Dissent

Date: 12-7-22


Jeffrey Donahue, Union Delegate
☐ Concur ☒ Dissent

b. Employer Issue 2 - Pension (Economic).

Last Best Offer of the Employer:

The Employer proposes to add a new paragraph to existing Section 17.3:

Effective January 1, 2023, the parties agree to modify the definition of FAC under the MERS Defined Benefit Plan only so as to cap overtime hours at 250 and in no other way modify the existing computation of FAC. The parties agree not to seek modifications to the MERS Defined Benefit Plan between January 1, 2022 and December 31, 2036.

Last Best Offer of the Union:

The Union proposes status quo contract language.

Discussion

The County's last best offer proposes to cap the number of overtime hours for purposes of calculating FAC at two hundred fifty (250) hours per year. In addition, the County proposes a fourteen (14) year moratorium on either party seeking modifications to the defined benefit plan. The County argues that doing so will ensure financial stability of the MERS Pension Plan.

Currently there are eight (8) deputies in the MERS Pension Plan. The remaining eight (8) deputies are in a defined contribution plan.

Internally, these eight (8) deputies are the only individuals that enjoy unlimited overtime as part of their FAC. The majority of County employees who participate in a defined benefit pension are subject to a FAC definition that includes only base wages. This includes non-union, 911 telecommunicators and prosecutors. In 2018 the corrections deputies agreed to modify their FAC definition to include only base wage, holiday, and longevity pay. Finally, in 2022 the command deputies bargaining unit agreed to a contractual provision mirroring the County's LBO in this case. The exception is that the moratorium on negotiating pension changes only stretches to 2033.

With regard to external comparables, the County points out that Eaton County limits FAC overtime to eighty (80) hours. Midland County limits overtime hours to one hundred twenty (120) hours.

The County readily acknowledges that the MERS Pension Funds within the County are all one hundred percent (100%) funded or better. This funding level was not by chance. Since 2013, the County has contributed more than twenty million dollars (\$20,000,000.00) extra into its pension funds. This strategy has boosted the funding levels as high as one hundred eleven percent (111%) in 2021. The County's last best offer is designed to sustain this funding level so as to guarantee the pension benefits promised under the various collective bargaining agreement.

Finally, the County points out that its proposal to cap FAC overtime at two hundred fifty (250) hours will have a minimal impact on bargaining unit employees. Over the past seven (7) years only two (2) employees have exceeded the proposed two hundred fifty (250) hour overtime limit. One employee did it three (3) times. The other employee did it once. Given this fact, the County's proposal will have virtually have no impact on bargaining unit employees.

The Union maintains that there is absolutely no justification for the County's last best offer. No actuarial analysis has been done to determine what if any savings would be realized if FAC was capped at two hundred fifty (250) hours of overtime. Absent any credible record evidence, the County's assumption that a savings would be realized should be given little if any weight. As for the fourteen (14) year moratorium on making further changes to the pension plan, the Union maintains that such a proposal would harm bargaining unit employees in times of prosperity. Bargaining unit employees would be prohibited from seeking benefit improvements from a fund that is already over one hundred percent (100%) funded.

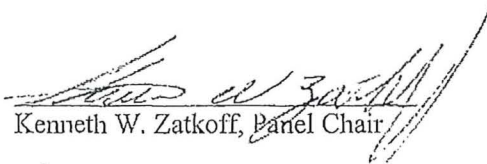
With regard to the external comparables, only two (2) of the ten (10) stipulated to comparables have FAC caps. The remainder have no FAC cap on overtime. This fact alone, warrants the continuation of status quo.

Admittedly, there is no evidence in the record to demonstrate that the County would realize any significant savings by limiting FAC overtime to two hundred fifty (250) hours. The record does suggest that given the two hundred fifty (250) hour threshold, bargaining unit members would suffer little if any harm should the cap be imposed. The bigger issue is the fourteen (14) year moratorium on negotiating benefit changes or improvements. Quite frankly, there is absolutely no support among external comparables for the County's proposal. Internally, it is acknowledged that the County command deputies (all of whom are in the MERS pension system) voluntarily agreed to a pension moratorium through the end of 2033. The record is silent on the details surrounding that agreement. The command deputies negotiated agreement does not take precedence over the comparables which clearly supports the Union's position of status quo. Based on the foregoing, a majority of the Panel finds that the Union's last best offer of status quo is more consistent with the statutory factors than the County's last best offer. Accordingly, a majority of the Panel awards for the Union.

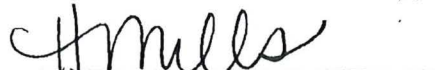
AWARD ON ISSUE 2

The LBO of the Union proposing status quo contract language is accepted.


Date: 12-5-22


Kenneth W. Zatkoff, Panel Chair

Date: 12-6-22


Helen Mills, County Delegate
☐ Concur ☒ Dissent

Date: 12-7-22


Jeffrey Donahue, Union Delegate
☒ Concur ☐ Dissent

c. Union Issue 3 – Field Training (FTO Pay) (Economic).

Union's Last Best Offer.

The Union proposes two (2) hours straight time for each day worked as FTO.

Employer's Last Best Offer.

The Employer proposes a new contract term capturing the parties' current practice:

An employee assigned to work as field training deputy shall receive an additional three (3) hours of overtime compensation for each pay period they are assigned to work with a trainee.

DISCUSSION

The Union proposes two (2) hours of straight time for each day a deputy works as a field training officer (FTO). The county proposes to memorialize the parties' current and long-standing practice of paying three (3) hours of overtime for each pay period a deputy is assigned as an FTO officer. The Union notes that FTOs have an extremely tough decision to make when it comes to whether or not a trainee should be confirmed as a deputy of the Sheriff's Department. While the record lacks evidence about what training entails or how much time is actually invested, it is clear that the work of a field training officer is essential not only to the success of new employees but to the Sheriff's Department as a whole. No doubt, field training deputies should be compensated for the important work they do. The County has a long history of paying via County policy three (3) hours of overtime per pay period as a reward for FTO services.

Of the ten (10) external comparable communities, four (4) provide no contractual benefit for FTO services. Three (3) counties pay a premium for each hour worked as an FTO and two (2) counties pay a premium per each shift working as an FTO. Finally, one (1) community pays eight (8) hours FTO for four (4) week (20 days schedule cycle) as an FTO. The Union maintains that two (2) hours straight time for each day worked is supported by the external comparables. The County argues that its long-standing practice should be continued.

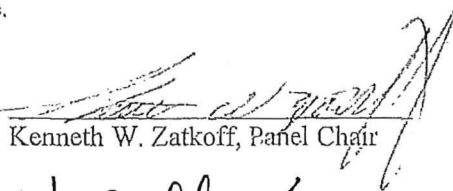
A majority of the Panel concludes that the Employer's last best offer of settlement is more consistent with the applicable Section 9 criteria than the Union's last best offer. Accordingly, a majority of the Panel awards for the County.

AWARD ON ISSUE 3 – FIELD TRAINING (FTO PAY)


The Last Best Offer of the County is accepted.

An employee assigned to work as field training deputy shall receive an additional three (3) hours of overtime compensation for each pay period they are assigned to work with a trainee.

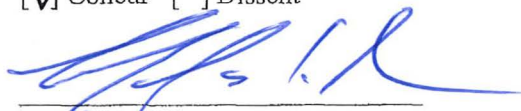
Date: 12-5-22


Kenneth W. Zatkoff, Panel Chair

Date: 12-6-22


Helea Mills, County Delegate
☒ Concur ☐ Dissent

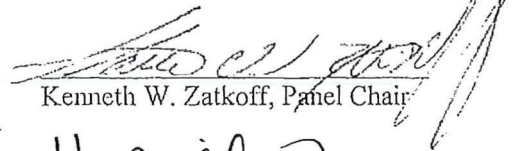
Date: 12-7-22


Jeffrey Donahue, Union Delegate
☐ Concur ☒ Dissent

SUMMARY OF AWARD

| ISSUE | AWARD |
|--|---|
| Union Issue 1: Holidays | The Last Best Offer of the County proposing sta quo contract language is accepted. |
| Employer Issue 2: Pension | The Last Best Offer of the Union proposing sta quo contract language is accepted. |
| Union Issue 3: Field Training (FTO) Pay | The Last Besst Offer of the County is accepted. |
| | |

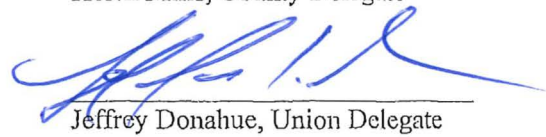
Date: 12-5-22


Kenneth W. Zatkoff, Panel Chair

Date: 12-6-22


Helen Mills, County Delegate

Date: 12-7-22


Jeffrey Donahue, Union Delegate

APPENDIX A

Joint Exhibits

Comparable Contracts

Internal Comparables

- Clinton County Command Officers – expiring December 31, 2024
- Clinton County Corrections Officers – expiring December 31, 2023
- Clinton County 911 Telecommunicators - expiring December 31, 2022
- Clinton County 911 Telecommunicators - expiring December 31, 2025
- Clinton County Prosecutors - expiring December 31, 2020 (decertified)

External Comparables

- Barry County Deputy Sheriff Unit – expiring December 31, 2025
- Bay County Sheriff Deputies - expiring December 31, 2022
- Cass County Sheriff Deputies - expiring December 31, 2025
- Eaton County Sheriff Deputies - expiring September 30, 2024
- Grand Traverse County Sheriff Deputies – expiring December 31, 2023
- Isabella County Sheriff Deputies - expiring December 31, 2023
- Lenawee County Sheriff Deputies - expiring December 31, 2023
- Midland County Sheriff Deputies - expiring December 31, 2023
- St. Joseph County Sheriff Deputies – expiring December 31, 2024
- Van Buren County Sheriff Deputies – expiring December 31, 2022

Tentative Agreements

- Duration 3 years – January 1, 2022 – December 31, 2024
- Wages (2022, 2023, 2024)
- Lump Sum
- Section 6.5 – Right to Representation
- Section 13.1 – Vacation Eligibility and Pay
- Section 14.4 – Shift Assignments
- Section 15.3 – Maintenance of Overtime Hours
- Section 17.1 - Insurance
- Section 17.3 – Health Care
- Section 17.9 – Liability Insurance
- Section 18.2 – Clothing Allowance
- Section 19.2 – Officer In Charge
- Section 19.4 – Canine Handler
- Body Worn Cameras
- See Union Exhibit 5

INDEX OF COUNTY EXHIBITS

- E-33 Clinton County Personnel Manual
- E-33a Non-union Defined Benefit Addendum
- E-34 Clinton County – Command Officers Association (COAM) 2022-2024 CBA
- E-35 Clinton County – Corrections Officers Unit (POAM) 2021-2023
- E-36 Clinton County – Telecommunicators (POAM) 2020-2022
- E-37 Clinton County – Telecommunicators (POAM) 2023-2025
- E-38 Clinton County – Prosecutors (PERA)
- E-39 Clinton County Bargained Modifications to Definition of FAC
- E-40 Overtime Summary
- E-41 Sample FTO Timesheet
- E-42 Seniority and Pension Eligibility
- E-43 Gross Pay and Percentage with Dept. Seniority
- E-44 Clinton County Annual MERS Actuarial Report (2021)
- E-45 Statewide Annual MERS Actuarial Report (as of 12/31/2021).
“The parties have agreed that if MERS issues the 2021 Statewide Actuarial Report before the Arbitration that this report will be added as an exhibit.
- E-46 Statewide Annual MERS Actuarial Report (as of 12/31/2021)

INDEX OF UNION EXHIBITS

- U-1 Scheduling Order
- U-2 Petition for Act 312 Arbitration (with attachments)
- U-3 Union's Last Best Offer
- U-4 Employer's Last Best Offer
- U-5 Partial Tentative Agreement between the parties
- U-6 Collective Bargaining Agreement (01/01/2020 – 12/31/2021)
- U-7 List of Agreed Upon Comparable Communities
- U-8 Comparable Size and Population Information (Source: U.S. Census Bureau, 2020 Census)
- U-9 Comparable Housing and Household Statistics and Information (Source: U.S. Census Bureau, 2020 Census)
- U-10 Comparable Taxable Valuation Comparison (Source: U.S. Census Bureau, 2020 Census)
- U-11 Comparable Taxable Value Per Capita (Source: U.S. Census Bureau, 2020 Census)
- U-12 Comparable Business and Economic Development Information (Source: U.S. Census Bureau, 2020 Census)
- U-13 Comparable Sheriff's Office Road Patrol Deputy Hourly Wages (Source: Comparable Collective Bargaining Agreements)
- U-14 Historical Population (Source U.S. Census Bureau, 2020 Census)
- U-15 Historical Property Tax Collection (Source: Clinton County 2022 Full Budget Document)
- U-16 Historical General Fund Balance (Source: Clinton County 2022 Full Budget Document 2002-2022)
- U-17 Undesignated General Fund Balance as a Percentage of General Fund Expenditures (Source: Clinton County 2022 Full Budget Document 2015-2022)
- U-18 County 2022 Annual Budget Document
- U-19 County 2021 Audited Financial Statement
- U-20 Facebook post by County Commissioner Robert Showers
- U-21 Video statement from County Commissioner Adam Stacey on American Rescue Plan Act (ARPA) Funds and Benefit Legacy Cost (Flash drive enclosed)
- U-22 *Lansing State Journal* article on MWC _Published June 1, 2022)
- U-23 Lansing Area Economic Partnership Release on MWC (August 9, 2018)
- U-24 External Comparables – Retirement Benefit Comparison and supporting collective bargaining agreement articles (Source: Comparable collective bargaining agreements)
- U-25 Retirement Funding Comparison – Accrued Liabilities and Assets of External Comparables (Source: MERS 75th Annual Actuarial Valuations for DB and Hybrid Benefit Plans, December 31, 2021)
- U-26 Clinton County Historical Active Defined Benefit Plan Participants (Source: MERS 75th Annual Actuarial Valuations for DB and Hybrid Benefit Plans (December 31, 2021)

- U-27 Clinton County Historical Retirement Funding Levels (Source: MERS 75th Annual Actuarial Valuations for DB and Hybrid Benefit Plans, December 31, 2021)
- U-28 Statewide Retirement Funding Level Comparison of MERS Participating Counties (Source: MERS 75th Annual Actuarial Valuations for DB And Hybrid Benefit Plans, December 31, 2021)
- U-29 Statewide Comparison of MERS Participating Counties Market Value Assets Relative to Payroll (Source: MERS 75th Annual Actuarial Valuations for DB and Hybrid Benefit Plans, December 31, 2021)
- U-30 Clinton County Detailed Historical Defined Benefit Plan Funding and Contribution Information (Clinton County 2021 Audited Financial Statements)
- U-31 External Comparables – Holidays
- U-32 External Comparables – Field Training Officer (FTO) Compensation

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- J-47 Barry County – POLC (Deputies) 2021-2025
- J-48 Bay County – POAM (Deputies) 2020-2022
- J-49 Cass County – FOPLC (Deputies & Detectives) 2022-2025
- J-50 Eaton County – POAM 2021-2024 CBA
- J-51 Grand Traverse County – POAM (Deputies) 2021-2023 CBA, POAM Wage Scale 2022-2023; POAM 2022 LOA; POAM 2015 LOA; POAM 202 LOA; POAM 2011 LOA
- J-52 Isabella County – POAM 2018-2020 CBA; POAM 2021-2023 TA; POAM 2021 Wage Reopener TA
- J-53 Lenawee County – POAM 2021-2023
- J-54 Midland County – POAM 2021-2023
- J-55 St. Joseph County – POAM 2022-2024
- J-56 Van Buren County – POAM 2020-2022