

THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDER
96-11-26-1

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IN THE MATTER OF APPROVING AN INTERGOVERNMENTAL
AGREEMENT WITH THE STATE DEPARTMENT OF CORRECTIONS
TO TRANSFER PAROLE AND PROBATION EMPLOYEES
ON DECEMBER 30, 1996

WHEREAS, the 1995 State Legislature adopted ORS 423.549 which abolishes state positions in community corrections branches and transfers authority and funding to counties for community corrections, including parole and probation services, effective January 1, 1997, and

WHEREAS, counties have until that date to exercise an Option one transfer under ORS 423.550, and

WHEREAS, pursuant to Ch. 423, as of January 1, 1997, all state positions in the State community corrections branch of the Department of Corrections are abolished, and

WHEREAS, the County and the State Department of Corrections agree that it is in their best interests and the best interests of the affected employees to provide for a smooth transfer of functions and responsibilities of the state community corrections branch in Lane County to the county and to provide for the transfer to County employment for state employees whose positions otherwise are abolished on January 1, 1997, through exercise of the provisions under ORS 423.550 prior to January 1, 1997, and

WHEREAS, the County and the State have negotiated an Intergovernmental Agreement which will detail their respective functions, responsibilities, and funding pursuant to Ch. 423,

NOW, THEREFORE, IT IS HEREBY ORDERED that:

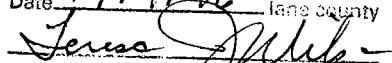
- 1) Employees of the State community corrections branch of the Oregon Department of Corrections be transferred to Lane County effective December 30, 1996, contingent upon an intergovernmental agreement being executed between Lane County and the State of Oregon, and
- 2) The County Administrator be authorized to execute the Intergovernmental Agreement substantially in the form attached in Exhibit A.

Adopted this 26th day of November, 1996.


 Bobby Green, Sr., Chair
 BOARD OF LANE COUNTY COMMISSIONERS

FILED

DEC 03 1996

APPROVED AS TO FORM
 Date 11/19/96 lane county

 OFFICE OF LEGAL COUNSEL

COUNTY CLERK
 BY 

In the matter of approving an Intergovernmental Agreement with the State Department of Corrections to transfer Parole and Probation employees on December 30, 1996

INTERGOVERNMENTAL AGREEMENT
BETWEEN
STATE OF OREGON DEPARTMENT OF CORRECTIONS
AND
LANE COUNTY
FOR EMPLOYEE TRANSFER

DRAFT 11/14/96

THIS Agreement is made and entered into this _____ day of _____, 1996 by and between the DEPARTMENT OF CORRECTIONS, an agency of the State of Oregon, hereinafter "DOC," and LANE COUNTY, a political subdivision of the State of Oregon, hereinafter "COUNTY."

RECITALS

WHEREAS, ORS 190.010, 190.110 and the Lane County Home Rule Charter provide that state agencies and units of local governments may enter into agreements for the performance of any or all functions and activities that a party to the agreements, its officers or agents, have authority to perform, and

WHEREAS, DEPARTMENT OF CORRECTIONS is an agency of the State of Oregon and LANE COUNTY is a unit of local government of the State of Oregon, and both parties desire to cooperate by agreement to provide effective, efficient services within Lane County within the requirements of law; and

WHEREAS, pursuant to ORS 423.550, a county may assume responsibility for any portion of correctional services previously provided by DOC, pursuant to an intergovernmental agreement, and

WHEREAS, pursuant to 1995 Or Laws, Ch. 423, on January 1, 1997, counties shall have full responsibility for offenders convicted of felonies who are on parole, probation, post-prison supervision or who are sentenced or sanctioned to 12 months or less incarceration; and

WHEREAS, pursuant to Ch. 423, as of January 1, 1997, all state positions in the state community corrections branch of DOC are abolished; and

WHEREAS, the parties agree that it is in their best interests and the best interests of the affected employees to provide for a smooth transfer of functions and responsibilities of the state community corrections branch in Lane County to the COUNTY and to provide for the transfer to County employment for the state employees whose positions otherwise are abolished on January 1, 1997 through exercise of the provisions under ORS 423.550 prior to January 1, 1997; and

WHEREAS, the DOC and COUNTY are in the process of negotiating a companion intergovernmental agreement which will detail their respective functions, responsibilities and funding pursuant to Ch. 423;

NOW THEREFORE, THE PARTIES, in consideration of the mutual promises, terms and conditions provided below, AGREE TO THE FOLLOWING:

I. COMMUNITY CORRECTIONS PLAN AND AMENDMENTS

COUNTY has developed and DOC has approved a Community Corrections Plan covering the period from execution of this agreement through December 31, 1996, and are in the process of preparation and approval of an amendment for the period January 1, 1997 through June 30, 1997. COUNTY and DOC expect to continue to perform such planning functions in accordance with state law. COUNTY and DOC agree that the Community Corrections Plan must remain a flexible instrument capable of responding to unforeseen needs and requirements. The COUNTY and DOC may seek to amend or modify the Plan according to ORS 423.525 and DOC rule governing the support and development of Community Corrections Programs, as needed. The approved plan and implementing intergovernmental agreement are companion documents to this agreement, and detail the parties respective functions and responsibilities, and appropriate funding.

II. EMPLOYEE TRANSFER

1. The 45 employees currently employed by the DOC in its Lane County Community Corrections branch who sign an election to become COUNTY employees, as described in Section IX below, will become COUNTY employees on December 30, 1996, and will be subject to the COUNTY rules and regulations regarding all aspects of employment, including as applicable the existing collective bargaining agreement between the COUNTY and AFSCME, as modified by Exhibit A, attached and incorporated by this reference. This transfer is subject to ORS 423.500 and 236.610-236.620, except as modified by this agreement.
2. This transfer is subject to the following conditions:
 - a. Each employee will be placed in a position in the existing COUNTY classification. The transferring employee will be placed at the nearest step on the salary schedule in their classification without a decrease in gross pay.
 - b. In implementation of the employee elections, DOC will make payment to the employees for all their accrued vacation, up to a maximum per employee of two hundred fifty (250) hours.
 - c. In implementation of the employee elections, up to eighty (80) hours of sick leave will be transferred to the COUNTY per employee, depending on what the employee has accrued at the State, to be used for County approved leave purposes. Such transferred time shall not be subject to payoff at employee termination, nor will it be transferable for purposes of PERS retirement benefits. Remaining sick leave accrual will remain available for purposes of PERS retirement, according to PERS regulations.
 - d. Merit date for purposes of COUNTY merit increases will be the date of transfer to the COUNTY. Merit dates for employees who transfer into the COUNTY at the top step of the salary range shall be selected at random.
 - e. COUNTY shall arrange for an exception of the pre-existing conditions clause with its Blue Cross Health Insurance Contract. COUNTY will identify any cost by December 30, 1996. DOC will pay for any increased premium costs for such waiver payment to be made no later than June 30, 1997.
 - f. DOC shall furnish COUNTY the employment records of the transferred employees by January 3, 1997.

g. While employed with DOC, the employees are in the PERS retirement system; they shall continue in PERS as employees of COUNTY, and the employees and COUNTY shall make their respective contributions to PERS. The employee's share (currently 6%) of the PERS contribution will be withheld from the employee's salary.

h. The COUNTY will consider parole and probation officers eligible for police/fire retirement under PERS, but the parties recognize that the ultimate authority to determine police/fire eligibility is up to PERS. The COUNTY does not guaranty or promise this eligibility to any employee.

i. The COUNTY will count prior service with the State towards the transferring employees' eligibility for County benefits, including employer-paid retiree health insurance benefits. For the purposes of the retiree health insurance benefits, the transferring employee's last date of hire in a permanent position with the State shall be used to determine eligibility.

j. In all other respects, the employees shall have the same privileges, including benefits, hours and conditions of employment, and be subject to the same requirements, as other COUNTY employees.

III. DOC and COUNTY RESPONSIBILITIES

1. DOC will furnish to COUNTY copies of all existing agreements and contracts it may have with other agencies, whether public or private, for the delivery of parole and probation services applicable to COUNTY, and work cooperatively with COUNTY to arrange for their transfer to COUNTY.

2. Provide funding as provided in Section IV of this Agreement.

3. Furnish COUNTY, in a timely manner, those rules, administrative directives and procedures required for COUNTY to meeting its obligations described therein.

4. DOC will furnish COUNTY, in a timely manner, those personnel records, documents and forms required for COUNTY to meet its obligations.

5. In accordance with the DOC OAR 291-31-025, section 2, paragraphs c and d, it is agreed that responsibility for all property contained in the Inventory of Nonexpendable property (copy attached) is transferred to COUNTY. If the COUNTY ceases to fully participate in Community Corrections as described in ORS ch. 423, the DOC may recover title and possession to said property.

6. DOC will ensure that COUNTY shall have continued access to the IBM AS400 presently known as the LANE400, and any other computer server presently being used by the Lane County Community Corrections branch for the functions being transferred, at no charge to COUNTY. If the LANE400 computer is used in any way other than for pass-through of COUNTY data to DOC system, COUNTY will provide support for additional activities.

7. COUNTY shall be responsible to reimburse DOC for telephone expenses related to COUNTY branch offices until such time that transition to the COUNTY telephone system is completed..

DOC agrees to provide COUNTY an opportunity to review and comment on all administrative rules intended to incorporate and implement new legislative initiatives that have fiscal or program impact on COUNTY.

IV. FUNDS

1. The funds authorized for this Agreement are to be detailed in the companion intergovernmental agreement detailing the respective parties' functions and responsibilities for community corrections under Ch. 423. The parties expect that that companion agreement will specify Grant-in-Aid and New Impact funds to be provided by DOC of \$2,901,002 of which the County intends at least \$1,482,000 will be used for the corrections functions previously performed by DOC and which will now be performed by the COUNTY through the employees being transferred by this Agreement. In addition to the contingencies described below in Section V, this agreement is also contingent on DOC providing through that companion agreement at least \$1,482,000 for these functions.
2. Other details related to funds, services, sanctions, supervision fees, underexpenditure or unauthorized expenditure of funds and noncompliance shall be detailed in the companion intergovernmental agreement.
3. If funding from DOC is reduced or discontinued by legislative action, COUNTY will not be required to increase use of COUNTY revenue for continuing or maintaining corrections services. If funds are not appropriated to carry out the purposes of ORS 423.500-423.560, or if the County withdraws from participating, any employee who has transferred employment shall be entitled to reenter state employment within 30 days.
4. In the companion intergovernmental agreement, DOC will address the transfer of carry-over funds sufficient to fund the employee transfer described in Section II above for the period December 30, 1996 to January 1, 1997.

V. HOLD HARMLESS

To the extent permitted by Article XI, Sections 7 and 10 of the Oregon Constitution and the Oregon Tort Claims Act, each party hereto agrees to indemnify, within the limits of the Oregon Tort Claims Act, and save the other harmless from any claim, liability or damage resulting from any error, omission, or act of negligence on the part of the indemnifying party, its officers, employees or agents in the performance of its responsibilities under this Agreement, provided the parties will not be required to indemnify the other for any such liability arising out of the wrongful acts of the other's officers, employees or agents.

VI. CONTINGENCIES/WAIVER

1. This agreement is contingent on the COUNTY'S receipt of an election form from all employees currently employed in the Lane County Community Corrections branch of the DOC, by not later than December 6, 1996, in which the employees choose to either transfer to the COUNTY or to remain with the State. A failure to submit the form shall constitute and be deemed by the parties to be an election by the employee to remain an employee of the State. A copy of the election form is attached hereto as Exhibit B, and incorporated by this reference.
2. The agreement is further contingent on at least 85% of the employees choosing to transfer to COUNTY employment. If less than 85% elect to transfer to the COUNTY, then the agreement is null and void.

3. This agreement is further contingent on execution by the parties of the Addendum to AFSCME Local 2831 Agreement, attached as Exhibit A, and agreement by FOPPO and AFSCME Local 2376 to this agreement, as signified by signatures below.

4. Any and all claims as to loss or reduction of any salary, benefit or condition of employment or any other claim that might have or might otherwise have been made under the statutes applicable to this transfer and/or under collective bargaining law are waived. The parties recognize that DOC has no authority with respect to post-transfer terms and conditions of employment for employees election to transfer from State to COUNTY employment; both parties nonetheless agree to make no claim of invalidity or illegality of this agreement or this waiver.

VII. TERMINATION

1. It is understood and agreed by the parties hereto that this Agreement will remain in force until terminated by them, or pursuant to law.

2. It is understood and agreed by the parties hereto that if any part, term or provision of this agreement, including any part, term or provision of any appended material is held, in a final judgment, by a court to be illegal or in conflict with any law of the State of Oregon or applicable administrative rule, that element of the contract including relevant appended materials will be void and without effect and will be treated by the parties as having been terminated as of the date of determination of voidness. The parties shall meet and negotiate in good faith to mitigate any economic impact of the judicial decision.

3. It is understood and agreed by the parties hereto that this Agreement will automatically terminate if the State of Oregon fails to provide any funding. If there is reduced state funding, the COUNTY may elect to modify the Agreement pursuant to Article I or to terminate it.

IX. TERM

The term of this Agreement will begin upon the date of execution of this Agreement and will continue indefinitely until terminated.

IN WITNESS WHEREOF, COUNTY has, by order of its Board of Commissioners, caused this Agreement to be signed in its name by its duly authorized representative, and DOC has caused this Agreement to be executed by its duly authorized representative.

STATE OF OREGON
DEPARTMENT OF CORRECTIONS

LANE COUNTY

By: _____
David S. Cook

By: _____
William A. Van Vactor

Title: Director

Title: County Administrator

Date: _____

Date: _____

The Federation of Oregon Parole and Probation Officers (FOPPO), on behalf of its members affected by the above agreement, having had an opportunity to review the related agreement between the COUNTY and AFSCME 2831, and the Employee Election form, and having had an opportunity to obtain independent counsel regarding these agreements, on behalf of itself and the members of its collective bargaining agreement, hereby agrees that any and all claims as to loss or reduction of any salary, benefit or condition of employment or any other claim that might have or might otherwise have been made under the statutes applicable to this transfer and/or under collective bargaining law are waived. FOPPO further agrees to make no claim of invalidity or illegality of this agreement or this waiver.

Agreed:

FEDERATION OF OREGON PAROLE
AND PROBATION OFFICERS

By: _____

Title: _____

Date: _____

AFSCME Local 2376, on behalf of its members affected by the above agreement, having had an opportunity to review the related agreement between the COUNTY and AFSCME 2831, and the Employee Election form, and having had an opportunity to obtain independent counsel regarding these agreements, on behalf of itself and the members of its collective bargaining agreement, hereby agrees that any and all claims as to loss or reduction of any salary, benefit or condition of employment or any other claim that might have or might otherwise have been made under the statutes applicable to this transfer and/or under collective bargaining law are waived. AFSCME Local 2376 further agrees to make no claim of invalidity or illegality of this agreement or this waiver.

Agreed:

AFSCME LOCAL 2376

By: _____

Title: _____

Date: _____

ELECTION OF STATE OR COUNTY EMPLOYMENT

Name: _____
(type or print)

DRAFT 11/14/96

I am an employee of the State of Oregon. If the State and Lane County enter into an intergovernmental agreement which become effective to transfer parole and probation functions from the State to Lane County prior to January 1, 1997 as an "option one" plan, and if such agreement provides, requires or permits affected State employees to elect to remain as employees of the state or to transfer to employment with Lane County, I hereby elect to

_____ remain an employee of the state.

_____ transfer to employment with Lane County.

My election to remain an employee of the State, if I have chosen that option, is irrevocable until on or after January 1, 1997. If I have elected to remain an employee of the State, I shall have no right to transfer to employment with Lane County.

My election to transfer to employment with Lane County, if I have chosen that option, is made in full recognition of the following representations and promises, as to which Lane County may rely:

I understand that Lane County is not willing to implement what is called an "option one" plan unless each affected state employees has elected, using this form, to remain an employee of the state or to transfer to employment with Lane County. The County's willingness to implement option one provides contractual consideration in the form of certainty as to future employment that would not exist if the County declined to implement option one.

I understand and agree that, except as noted in this document, all aspects of my employment with Lane County, including without limitation, salary, hours of work, conditions of employment, sick pay, vacation and other benefits, shall be determined solely by reference to Lane County's plans for its employees and/or its collective bargaining agreement with AFSCME, including any modifications to their collective bargaining agreement that have been or may be agreed to by Lane County and AFSCME, whichever is applicable to my position at the County. I also understand and agree that by signing this document, I am exercising my rights under statute as to the matters described here.

As to matters affected by this election, I hereby waive any and all claims as to loss or reduction of any salary, benefit or condition of employment or any other claim that I might have or might otherwise have been able to make under the statutes applicable to transfer from the State to Lane County, including ORS 236.605 to 236.640, ORS 423.550 and statutes and regulations regarding collective bargaining, promise that I will make no such claim, and further promise that I will make no claim of invalidity or illegality of this election and waiver, or of the intergovernmental agreement.

In making this election and waiver, I specifically recognize that, among other things that may be affected,

a. I will receive payment from the State for all of my accrued vacation time up to 250 hours.

b. My accrued sick leave, up to a total of eighty (80) hours, will be transferred from the State to the County, to be used by me for County approved leave purposes. This transferred leave will not be subject to payoff whenever I leave County employment, nor will it be transferable for PERS retirement benefits. Any remaining sick leave accrued will remain available for purpose of PERS retirement, according to PERS regulations.

c. My merit date for purposes of County merit increases will be the date of transfer to the County, December 30, 1996. If I am at the top step of the salary range, my merit date will be selected at random.

d. The County will arrange for an exception of the pre-existing conditions clause in its Blue Cross Health Insurance Contract.

e. **REQUIRED PERS CONTRIBUTIONS WILL BE DEDUCTED FROM MY GROSS SALARY.**

f. **My PRIOR SERVICE WITH THE STATE WILL COUNT** toward my eligibility for County benefits, including employer-paid retiree medical benefits that I would not have received as a State retiree.

g. The County will consider parole and probation officers eligible for police/fire retirement under PERS, but **THE ULTIMATE AUTHORITY TO DETERMINE POLICE/FIRE ELIGIBILITY IS UP TO PERS** and the County does not guaranty or promise that PERS will agree with the County.

This election will be ineffective unless all members of the affected employees in the State parole and probation group execute elections on or before December 6, 1996, and if the election is ineffective for that or any other reason, or if the related agreements by the County with the State, AFSCME and

FOPPO are not executed, this election shall not provide any basis for claims by me of a right to employment by Lane County or other relief. IF I FAIL TO EXECUTE OR RETURN THIS FORM, THAT SHALL CONSTITUTE AN ELECTION BY ME TO REMAIN AN EMPLOYEE OF THE STATE, AND I UNDERSTAND THAT THE STATE AND COUNTY WILL BE ENTITLED TO TREAT MY ELECTION IN THAT MANNER.

I have had an opportunity to review any related agreements between Lane County and AFSCME, and Lane County, the State and FOPPO which are being proposed in conjunction with this election, and have had an opportunity to obtain independent counsel as to making this election.

If I have made any alteration to the terms of this agreement, or if I have signed this form without making the choice provided above for State or County employment, my signature on this form shall, notwithstanding any marks or marks placed in the choice blocks above, constitute an election to remain an employee of the State.

DATE: _____

Signature

Name (type or print)

D R A F T**ADDENDUM TO AFSCME 2831 AGREEMENT WITH LANE COUNTY
PAROLE AND PROBATION EMPLOYEES TRANSFERRED FROM THE STATE****Effective December 30, 1996**

The following conditions will apply to Parole and Probation Employees transferred to Lane County from the State of Oregon; and, as applicable, all other Parole and Probation Employees employed by the County who fall under the terms and conditions of the AFSCME 2831 contract:

1. All State transferred Parole and Probation Employees will be placed in existing County AFSCME bargaining unit classifications.
2. Seniority and Time Management accrual will be based on an employee's total seniority from their date of hire with the State. The State will be responsible for payoff of accrued Vacation time up to 250 hours per employee. Up to eighty (80) hours of sick leave will be transferred to Lane County and may be used for approved leave purposes. However, such transferred time shall not be subject to payoff at termination, nor will it be transferrable for purposes of PERS retirement benefit. Per PERS regulations, remaining sick leave accrual will remain available for purposes of PERS retirement. Merit date for purposes of County merit increases would be their date of transfer to the County. Merit dates for those employees who transfer into the County at the top step of the salary range, shall be selected at random.
3. The employee's share (currently 6%) of the PERS contribution will be withheld from transferring employees salary. Such withholding shall be in accordance with the provisions of Article XII, Section 2 (B) of the AFSCME 2831 contract.
4. Transferring employees will be granted an exception of the pre-existing conditions clause of the Blue Cross Health Insurance contract for purposes of health benefit eligibility.
5. For purposes of retiree health insurance benefits as provided under Article XII, Section 3 of the AFSCME 2831 contract, a transferring employee's last date of hire in a permanent position with the State will be used to determine eligibility.
6. Parole and Probation Officers will be considered eligible for Police and Fire PERS benefits, subject to the agreement of PERS.
7. Parole and Probation Officers will not be eligible for Recall and On-call pay as defined in Article IX, Section 9 (A) and Section 11 of the AFSCME 2831 contract.

Parole and Probation Officers are not required to carry a pager during off-duty hours.

Employees who are directed by their supervisor to respond during off-duty hours may elect to flex such hours earned, or accrue compensatory time, at the rate of one and one-half (1-1/2) hours for each hour worked.

Employees may flex their work schedule within the 80 hour bi-weekly pay period. However, should a Parole and Probation Officer actually work beyond the eighty (80) hours in any bi-weekly pay period, it shall be treated as compensatory time off in lieu of overtime, under the terms and provisions of the AFSCME agreement. Flexing of work schedules and accrual of compensatory time must have advance supervisory approval.

- 8. Transferring employees will be placed at the nearest step on the salary schedule in their classification, without a decrease in pay.
- 9. Any and all claims as to loss or reduction of any salary, benefit or condition of employment or any other claim that might have or might otherwise have been made under the statutes applicable to this transfer and/or under collective bargaining law are waived. The parties agree to make no claim of invalidity or illegality of this waiver or of the intergovernmental agreement.

Except as modified by this addendum, all other terms and conditions of the contract between AFSCME Local 2831 and Lane County shall apply.

The effectiveness of this agreement is dependent upon execution of the intergovernmental agreement between Lane County and the State covering this transfer; and, execution of the Election of State or County Employment agreement by transferring employees.

Dated this _____ day of _____, 1996.

FOR LANE COUNTY

FOR AFSCME 2831

Subject to ratification by the Board of Commissioners, and approval by representatives of the State.