

Central Human Resources/Labor Relations

September 2, 2014

Hank Kaplan

*By Email and U.S. Mail*

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Article 21 - Notice Regarding Anticipated Transfer of Work

Dear Hank,

In accordance with Article 21 of the MCCDA collective bargaining agreement, this letter is to provide formal notice that the County anticipates transferring duties related to the monitoring of constant suicide watch inmates outside the MCCDA bargaining unit.

As discussed during recent ERC meetings, MCSO has prepared a new position description for a position that would be responsible for direct monitoring of inmates on constant suicide watch. The minimum qualifications and essential functions of this position have been submitted to the County's Classification and Compensation Unit for a formal classification determination and assignment. The position has been classified as Facility Security Officer. Because the position has been classified outside the MCCDA bargaining unit, MCSO will meet with the MCCDA to discuss the effect of transferring duties no less than 30 days prior to the presentation of any proposal to the County Board for formal budget action.

MCCDA has repeatedly stated its intent to challenge any attempt by the County to transfer the monitoring of inmates on constant suicide watch to any individual outside the MCCDA bargaining unit. Although no layoffs would result from this transfer, the County recognizes MCCDA's financial interest in preserving the significant overtime wages MCCDA members currently receive to perform this function. However, these same overtime costs have become prohibitive and MCSO must perform this critical function more efficiently.

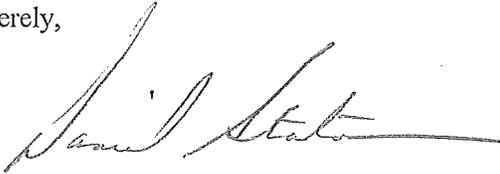
The County anticipates MCCDA might object to the monitoring of inmates by anyone other than corrections deputies on the grounds that such work is reserved to Corrections Officers under Article 21.9.B. of the Collective Bargaining Agreement. The Suicide Watch position, however, will be authorized only to observe inmates on constant suicide watch, and will not be authorized to engage inmates under the supervisory authority of the Sheriff as defined in MCC 15.001(B).

The County also anticipates MCCDA will object to the County invoking the 30-day "meet and confer" process of Article 21. 9.A. of the collective bargaining agreement. During the September ERC meeting, MCCDA E-Board members questioned the County's interpretation of Article 21 in light of the Employment Relations Board's decision in *Multnomah County Corrections Deputies Assn. v. Multnomah*

County, 22 PECBR 422 (2008). Footnote 4 from this case contains dicta suggesting Article 21 would not apply to the contracting out of the Close Street Program because that transfer did not result in layoff of bargaining unit members and was not part of a formal budget modification process. In the Close Street case, however, the County's affirmative defense of the waiver was not considered by the ERB due to a procedural flaw with the filing of the County's answer. The County and MCSO have consulted with County legal counsel and are confident that a full consideration of the matter would lead the ERB to conclude the language of Article 21 and Article 23 constitutes clear and unmistakable waiver of MCCDA's right to demand further bargaining over the transfer of bargaining unit work that is adopted through formal Board consideration of budget modifications. In fact, ERB has already found the existence of a clear and unmistakable waiver from similar contract language in *AFSCME Local 88 v. Multnomah County*, 7 PECBR 6452, 6469 (1984).

Please contact me with any preliminary questions you may have or to schedule a meeting.

Sincerely,

A handwritten signature in cursive script, appearing to read "Daniel Staton".

Daniel Staton, Multnomah County Sheriff

A handwritten signature in cursive script, appearing to read "Jeff Heinrich".

Jeff Heinrich, County Labor Relations Manager