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UFC 002-22
2/5/24

Attorneys for LOS ANGELES COUNTY
PUBLIC DEFENDERS UNION, LOCAL 148

8 **BEFORE THE COUNTY OF LOS ANGELES**
9 **EMPLOYEE RELATIONS COMMISSION**

10 LOS ANGELES COUNTY
11 PUBLIC DEFENDERS UNION, LOCAL
12 148,

Case No. UFC 002-22

13 Charging Party,

**CHARGING PARTY'S EXCEPTIONS
TO THE HEARING OFFICER'S
REPORT**

14 vs.

15 LOS ANGELES COUNTY PUBLIC
16 DEFENDER'S OFFICE,

17 Respondent.

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19
20 Charging Party hereby submits its Exceptions to the Hearing Officer's Report, as follows:

- 21 A. **EXCEPTION TO HEARING OFFICER'S FINDING THAT "THE UNION HAS**
22 **NOT ESTABLISHED THAT THE CHANGE CONCERNED A MATTER**
23 **WITHIN THE SCOPE OF REPRESENTATION**

24 The Hearing Officer agrees that the Union established that the Employer took action to
25 change an existing policy or past practice. The changes is related to case management, which is a
26 large part of the employees' duties.

1 The Case Management System (“CCMS”) project started in 2017 to replace the paper file
2 system in place. Mohammed Alrawi¹ started in 2019 to help complete the project. Mr. Alrawi
3 testified that the project was facing challenges and it was supposed to go live at the end of 2019,
4 but because of different issues it did not go live until October 29, 2020. (Tr., Vol. II, 60-61.)

5 Mr. Alrawi claimed that there was an existing policy requiring complete case files but
6 that the case management system did not change the policy of terms of operations and what they
7 are supposed to do in terms of building a case, it merely changed from a paper file to the case
8 management system. (Tr., Vol. II, 43.) Mr. Alrawi testified that the case management system “is
9 a tool for attorneys to build the case files, which is mandatory for line attorneys to maintain, and
10 it’s a tool for managers to help manage – line managers – help manage operations. But it’s also
11 because of that, because it’s the transactional system, the system of record, it becomes that of
12 goldmine for the agency to show value, quality, to name quantity, who are funders.” (Tr., Vol. II,
13 62.)

14 Mr. Alrawi testified that, on October 29, 2020, that everyone on the adult side started
15 using the CCMS system. (Tr., Vol. II, 79.) The only part being used in October 2020 was the
16 adult felony misdemeanor component of the system. (Tr., Vol. II, 61.) Garrett Miller² testified
17 that it had not been rolled out to every unit, every division. “For example, it was not in the
18 mental health unit, it was not in our juvenile unit at that time. So when you are saying it was
19 office-wide, that actually wasn’t the case and that’s why I’m trying to indicate that it was an
20 ongoing rollout. Even though this policy was in place, it was not in every unit at that time. And
21 so that’s why, I maybe, testified like I did.” (Tr., Vol. II, 26-27.)

22 **B. EXCEPTION TO FINDING THAT THE CHANGE DID NOT CONCERN A**
23 **MATTER WITHIN THE SCOPE OF REPRESENTATION**

24 On January 12, 2022, Public Defender Ricardo D. Garcia announced:
25
26

1 Mohammed Alrawi has been the Chief Information Officer for the Department since April
2019. (Tr., Vol. II, 59.)

2 Garrett Miller has been an employee of the Public Defender's Office for approximately 10
years (Tr., Vol. II, 7.) From the beginning of the current iteration of the Union, Mr. Miller was a
board member and became the President of the Union in early 2023. (Tr., Vol. II, 8.)

1 I am proud to share that many of you have either participated or consulted in the
2 effort to establish a dynamic case complexity measurement system—an attorney-
driven effort that replaces the current static, incomplete, and outdated system.

3 Unlike the old system, and per my directive, this system was designed by line
4 managers and trial lawyers forming the CCMS Steering Committee and reviewed
5 by your colleagues from across the department who participated in the officewide
6 peer review. Their work has built an innovative and comprehensive measurement
7 tool. The tool will accurately record, represent and measure each of our clients'
8 cases, not only the most serious charges, but by factoring in variables such as
client needs and history, support staff effort and involvement, volume of
discovery documents and body-worn videos. This will result in a more accurate
representation to the Board of Supervisor and the CEO of what it takes to
represent our clients, their constituents, across the County of Los Angeles.

9 I want to address how the case complexity measures will be used during the initial
10 rollout (Phase I). The initial phase is to change the current system from static
caseload measure, to a dynamic and comprehensive case complexity measure.
11 This phase does not define workload thresholds to determine case assignments by
Head Deputies. Workload thresholds will be researched and explored
12 collaboratively in a subsequent phase (Phase II), including input from internal and
external subject matter experts, and our labor partners.

13 Phase I is critical and must be completed quickly to share accurate case
14 complexity data with the Board of Supervisors and the CEO to support my goal to
right size staffing and add resources in the coming fiscal year. To remain on our
15 fiscal year budget schedule, I am directing the CCMS Steering Committee to
commence the implementation of Phase I with our Information Technology team.

16 Thank you all for your efforts to help our department gather and provide accurate
17 data to the Board and the CEO.

18 (UXD.)

19 The new case complexity system was implemented, and the attorneys were told that
20 Phase 1 would attempt to score case complexities based off what was in the case management
21 system and would collect data automatically. (Tr., Vol. II, 14.) At the time in January of 2022,
22 the previous static 10-point scale was taken away, and the new dynamic scale was put in place.
23 (Tr., Vol. II, 16.) The new system put in place was developed by attorneys in the office through
24 the committee and involved many different types of points for different types of tasks to measure
25 case complexity. (Tr., Vol. II, 18.)
26

1 The new system involved new case complexity categories that required employees to
2 record data as they moved a case along. (Tr. Vol. I, 30.)

3 Mr. Trochez testified that Phase 1 of the case complexity measurement system was an
4 effort that “As we talked about, worn out of the efforts of the CCMS committee. They developed
5 a framework that would take inputs from various elements within the CCMS system to attribute
6 them to the complexity of a case. So very – client factors, the evolution of the case would all
7 play into an aggregate and escort card given to you, you know, a case. The rollout of Phase 1 was
8 an effort to start collecting data to help understand the system framework, to evaluate its ethicist
9 in achieving its standard goals and continue work on that effort and tweak along the way. That
10 was the Phase 1 rollout.” When asked about the intention at the time of the Phase 1 rollout, Mr.
11 Trochez stated, “Well, the idea was to formulate a better understanding of our case complexities.
12 All right. The idea was to have a maturing-enough system where we had confidence in it. To
13 have better – more-informed discussions regarding our trends. All right. So we’re talking about
14 trends, are we seeing more-complex cases coming into our docket, or are we seeing less complex
15 based on our defined parameters. That was aspirational. I’ll tell you, we have not done that yet
16 but that was the intent within that language.” (Tr., Vol. II, 49-50.)

16 Mr. Trochez later testified that “Phase 1 is the rollout of the case complexity system
17 running – we call it the background of our CCMS system. As I just mentioned to Mr. Heard, the
18 goal was to continuously collect, shape, improve, and have confidence in the data integrity of our
19 system. And so there was no definitive set ending for Phase 1. Phase 1 is that entire process.”
20 Mr. Trochez also stated that Phase 1 is still ongoing. (Tr., Vol. II, 52.)

21 Asked whether there are any duties that are required of the public defenders to participate
22 in Phase 1, Mr. Trochez stated “Phase 1 is a reference to the launching of the case complexity
23 system. The case complexity system feeds off of the system of record which is CCMS. And so to
24 answer your question, contentiously, yes; right? If attorneys are using the system of record which
25 is a requirement for the policy which Mr. Heard showed on the screen then, yes. They are
26 required throughout Phase 1 but there’s no added functions required of them.” (Tr., Vol. II, 52-
53.)

1 When asked if there was a point where everybody in the office started using CCMS, Mr.
2 Alrawi started, “When we launched, which was the last component and that was 2022, the
3 beginning of 2022. This was the last component and this is when the last unit officially moved to
4 CCMS.” (Tr., Vol. II, 80.) Mr. Alrawi is not aware of any individuals receiving discipline for not
5 using CCMS. (Tr., Vol. II, 80.)

6 Mr. Alrawi testified that the county implemented a new system in January 2022 that
7 “originally it was keeping the old system but enhance it with time tracking. The task that the
8 steering committee was given was, can we create a case complexity system that can be objective,
9 have logic and science behind it, and will alleviate the need of conversum data entry and time
10 tracking by the attorney. So that was the direction that the steering committee took on.” (Tr.,
11 Vol. II, 73-74.)

12 When asked what Phase 1 entailed, Mr. Alrawi stated, “So Phase 1 – let’s see. Case
13 complexity is different and separate from workload. Case complexity, if I would describe it, it’s
14 a measuring tape. It’s a measuring cup where we want to quantify a case from, you know, 1 to
15 10. It used to be 0 to 10, so it was an 11-point system. Now it’s a 1 to 10. So what is a 1 and what
16 is a 10, and create those lines then a workload study will need to take place. And that’s Phase 2
17 which has not happened. That will one, evaluate how this was measured by the attorneys and
18 enhance it.” (Tr., Vol. II, 74-75.)

19 Mr. Alrawi continued that “So Phase 1 is to look at the case. And look at so many points
20 within the case and by look at, I mean it’s an automated tool, and it’s embedded in CCMS that
21 looks at the case file dynamically and factor in so many areas compared to the old system
22 starting with the exposure and that’s the baseline. What’s the maximum exposure that this client
23 is facing and what will give the baseline complexity number, but then it will look at things that
24 will exist within the case file, which is the client names, if they need an interpreter, if they have
25 other charges in other cases, how many work requests of the attorney has been submitted.
26 Whether it’s investigated or illegal, how many hours of body-worn video that this case has and it
automatically calculates that. Motion and things of that nature. So you will see a case in the
beginning, we’ll have a value that has a working case and the attorneys building the case file.

1 We'll see the complexity will start increasing, and as the case gets settled and flows, it will
2 decrease. But you will see that more dynamic with time representation of what the case means
3 today, or you know. (Tr., Vol. II, 75.)

4 The information used in Phase 1 case complexity measurement comes from “the touches
5 that the attorneys already do on CCMS.” (Tr., Vol. II, 75-76.) Mr. Alrawi testified that the case
6 complexity measuring portion relies 100 percent on the case management system. (Tr., Vol. II,
7 66.) As of January 22, 2022, the case complexity measurement was not reliant on any
8 information outside of CCMS. (Tr., Vol. II, 76.) Mr. Alrawi agreed that, if everybody is not
9 using CCMS, that the data will not be complete and could impact the case complexity number.
(Tr., Vol. II, 81.)

10 From August 2021 to January 2022, the Department made wholesale changes to how the
11 public defenders manage their cases. Such a change to such a large part of the employees' duties
12 is no doubt within the scope of representation.

13 **C. DESPITE NOT BEING AT ISSUE, THE HEARING OFFICER INCORRECTLY**
FOUND THAT THE UNION HAD AN OPPORTUNITY TO BARGAIN

14 Los Angeles County Public Defenders Union (Union) won their decertification effort
15 against AFSCME Council 36, and were certified as the exclusive collective bargaining agent on
16 May 24, 2021.

17 On August 11, 2021, the Department instituted a new policy regarding keeping
18 information in the CCMS. (CX1.) Jon Trochez³ does not recall if there was any notification to
19 the members about the policy started in August 2021, and does not recall if there is any sort of
20 acknowledgment of by employees of the new policy in August 2021, and agrees that the policy
21 in August 2021 is not mentioned at all in the email regarding the rollout of Phase 1. (Tr., Vol. II,
22 53.) Mr. Miller testified that despite what the policy stated, it was not the reality for the entire
23 office because use of the CCMS was not Department-wide. (Tr., Vol. II, 27.) While the CCMS
24 had been used to assign cases with a calendaring system, it had not been widely used. (Tr., Vol.
25 II, 12.)

26 ³ Jon Trochez has been the Administrative Deputy for the Public Defender's Office since August 2021. (Tr.,
Vol. II, 41-42.)

1 In October 2021, the Union made a proposal to form a committee that would negotiate
2 over workloads and a system to measure the complexities of different cases to provide accurate
3 weights to those cases. (Tr. Vol. I, 20-22.) The existing case complexity system involved a 10-
4 point scale in which the more serious cases would be closer to a 9 or a 10, and less serious cases
5 would be lower on the scale. (Tr., Vol. II, 13.) The Union’s proposal included a committee to
6 study workloads, and Tris Carpenter⁴ later learned that there was a committee to study
7 workloads in existence. (Tr. Vol. I, 23.)

8 Mr. Miller testified that appropriate workloads had been a discussion in the office for
9 numerous years, and in the previous 2021/2022 time frame, the county had created two
10 committees, one was to discuss case complexity related to workload and the other was to discuss
11 a case management system. (Tr., Vol. II, 9.) There were actually two committees ongoing, one
12 involved the interface of the new system, and the other involved appropriate weighting of cases
13 by their complexity. (Tr. Vol. I, 24-25.)

14 Mr. Trochez was not a member of either of the committees and did not oversee the
15 committees but testified that one committee was a workload determination committee and the
16 other was a case management system steering committee to research and identify methods to
17 measure attorney workloads. (Tr., Vol. II, 43.)

18 Mr. Carpenter spoke with members of the committees and learned that there was a great
19 deal of disagreement among the committee members as to what should go into case complexity
20 weighting. (Tr. Vol. I, 27-28.) The committee believed that the weighting system was incredibly
21 flawed and would not be able to provide an accurate weight of case complexity. (Tr. Vol. I, 28.)

22 Mr. Trochez claims that in August 2021, he reached out to then union president Christine
23 Rodriguez to provide input in the committee meetings. Mr. Trochez stated that “A meeting did
24 not take place for reasons unbeknown to me until December 2021.” (Tr., Vol. II, 44.) The
25 meeting that took place in December 2021, Mr. Trochez stated that it provided the framework of
26 the CCMS case complexity system. (Tr., Vol. II, 44.)

⁴ Tris Carpenter owns a consulting company called California Labor Strategies and assists the Union on labor negotiations. Mr. Carpenter previously worked for AFSCME, who represented the Union for several years. (Tr. Vol. I, 17-19.)

1 Mr. Trochez testified that they desired union participation because they felt that it was the
2 only way to engage in a meaningful result in assessing the proper caseloads for attorneys to
3 carry. Mr. Trochez stated that they felt that it was important to engage early and throughout the
4 process knowing that the eventual product, which would be the negotiation of standards, would
5 have to be, you know, with labor and so it would be best to start early and often rather than at the
6 end of it.” In that regard, in the fall or winter of 2021, there were discussions regarding
7 workloads that Mr. Trochez stated include exchanging proposals regarding the establishment of a
8 workload committee, efforts to hire consultants, and the eventuality of negotiating workload
9 standards.” (Tr., Vol. II, 45.) Mr. Trochez agreed that the county met with the union in
10 December 2021 and announced the implementation of Phase 1 in January 2022. (Tr., Vol. II, 54.)

11 At the meeting in December of 2021, the County asked the Union to sign off on the case
12 complexity system they had created and stated that they could lose funding if the Union does not
13 agree. The Union was concerned about the inaccuracies of the system and refused to sign off on
14 the system. (Tr. Vol. I, 28-29.)

15 The union did not agree with the system that the county had developed because it seemed
16 arbitrary in nature. The union was also concerned that the system was merely developed by
17 attorneys in their office rather than subject matter experts that could understand how case
18 complexity really works. (Tr., Vol. II, 20-21.) Mr. Miller considered the new system to be
19 arbitrary because the requests for certain things added, for example, a quarter point if you do
20 investigation requests. However, many of the tasks would limit the amount of points awarded for
21 multiple tasks of the same sort. Additionally, older cases would start losing points, which does
22 not necessarily make the case less complex. (Tr., Vol. II, 37-38.) The union complained about
23 the arbitrary nature of the point system prior to the implementation in January 2022. (Tr., Vol. II,
24 39.)

25 There was no meaningful opportunity to bargain. Mr. Trochez presented no evidence
26 (email) that shows he reached out to the Union. The Department did not ask the Union to appoint
members to the steering committees, rather chose whatever employees it wished. After the Union

1 did meet with the Department, the Department attempted to pressure the Union to sign off on the
2 change and when it refused, the Department announced the change less than 1 month later.

3 Here, the Department created its own case complexity system. In December of 2021, it
4 met with the Union for the first time to present the new case complexity system. When the Union
5 expressed concerns over the case complexity system, the Department attempted to pressure the
6 Union into accepting the system. When it refused to do so, the County implemented the Case
7 Complexity system on January 12, 2022 – within 30 days of first meeting with the Union.

8 The County admitted that it did not meet with the Union regarding Phase 1 of the Case
9 Complexity system until December of 2021. However, on January 12, 2022, it implemented its
10 preferred system against the objections of the Union. This is a textbook case of a unilateral
11 change.

12 The County attempts to minimize its implementation of Phase 1 by stating it was a pre-
13 existing policy, that it desired the Union’s input, and that it does not require any additional
14 duties. The testimony of Mr. Alrawi disputes those notions. He stated that the system is
15 incomplete if it is not being used by everybody. He stated that the system is 100% dependent on
16 the data that is entered. But we know from Mr. Miller’s testimony that despite the policy being
17 put in place in August of 2021 and the CCMS system going live prior, the entire office did not
18 use it prior to the Department implementing it in January of 2022. And Mr. Alrawi agrees with
19 that statement. (Tr., Vol. II, 80.)

20 The CCMS Steering Committee was created by management, with certain rank-and-file
21 members asked to participate. The Union was bypassed entirely as a part of the process: the
22 Union was not consulted regarding the appointment of members to the committee, nor asked to
23 negotiate over the arrived upon results. Thus, the CCMS Steering Committee had no “labor”
24 component; in fact, many of the rank-and-file attorneys asked to participate had serious
25 objections to the conclusions of the committee.

26 The Union, in fact, made the demand in negotiations *a full three months before the
announcement that the case complexity system was being implemented*; the Employer had ample
time to meet and confer in a meaningful way with the Union. The system, quite contrary to the

1 Respondent’s arguments, was not “...developed in collaboration with and reviewed by Deputy
2 Public Defenders – without precluding further negotiations at the bargaining table or further
3 discussions in the existing JLMC.”

4 This is a clear case of a unilateral change.


5 **D. CONCLUSION**

6 Based on the foregoing, the Union respectfully requests that the Commission find that the
7 Department has violated the Ordinance and make any remedial orders that are just and proper.

8 Dated: February 5, 2024

Respectfully Submitted,

9 **THE MYERS LAW GROUP, A.P.C.**

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