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7 COUNTY OF LOS ANGELES,  
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8

9 COUNTY OF LOS ANGELES

10 EMPLOYEE RELATIONS COMMISSION

11 LOS ANGELES COUNTY PUBLIC  
DEFENDER'S UNION,

12 Charging Party,

13 v.

14 LOS ANGELES COUNTY PUBLIC  
DEFENDER'S OFFICE,

15 Respondent.  
16

Case No.: UFC 002-22

**RESPONDENT'S OPPOSITION TO  
CHARGING PARTY'S EXCEPTIONS TO  
HEARING OFFICER'S REPORT**

Hearing Officer Andrea Dooley

Date: March 7, 2023, September 11, 2023  
Location: Remote Videoconference

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19 Respondent Los Angeles County Public Defender's Office (the "County") hereby submits  
20 its Opposition to Charging Party Los Angeles County Public Defenders Union (the "Union")  
21 Exceptions to Hearing Officer Andrea Dooley's Report, dated January 3, 2024, in UFC No. 002-  
22 22.

23 **I. INTRODUCTION**

24 The unilateral change charge in this matter arises from an email Public Defender Ricardo  
25 Garcia sent to attorneys in the Office of the Public Defender on January 12, 2022. That email  
26 announced the rollout of Phase I of a "case complexity measurement system." The Phase I system  
27 was designed to "record, represent and measure each of our clients' cases" in order to present "a  
28 more accurate representation to the [Los Angeles County] Board of Supervisors and the [County

1 Chief Executive Office] of what it takes to represent our clients” and thereby obtain additional  
2 resources for the Public Defender. Mr. Garcia also made it clear that Phase I would *not* affect  
3 attorney workloads. “This [initial] phase does not define workload thresholds to determine case  
4 assignments by Head Deputies. Workload thresholds will be researched and explored  
5 collaboratively in a subsequent phase (Phase II), including input from internal and external  
6 subject matter experts, and our labor partners.” (*See* Union Ex. 1D.)

7 In this charge, the Union alleged that the January 12, 2022 announcement constituted a  
8 unilateral change in violation of Employee Relations Ordinance (ERO) sections 5.04.240(A)(1)  
9 and (3). After hearing two days of testimony and considering the parties’ closing briefs, Hearing  
10 Officer Andrea Dooley rejected the Union’s contentions and recommended that the charge be  
11 dismissed. (*See* Hearing Officer Report at 11.) The Union’ has filed three exceptions to the  
12 Hearing Officer’s Report but, as shown below, those exceptions lack merit.

13 The Union’s first exception is to the finding that the County’s August 2021 requirement  
14 that Deputy Public Defenders (DPDs) maintain case records in an electronic database, the Client  
15 Case Management System (“CCMS”),<sup>1</sup> rather than in paper records was not a matter within the  
16 scope of representation. But the Union failed to include that August 2021 directive in the  
17 operative Second Amended Charge, thereby waiving any right to dispute it now. Moreover, the  
18 Hearing Officer correctly concluded that the County had the exclusive management right to  
19 require the DPDs to maintain case records in the CCMS.

20 The Union’s second exception is to the Hearing Officer’s purported finding that the  
21 January announcement of the Phase I measuring System was a matter within the scope of  
22 representation. But the Hearing Officer did not make that finding in her Report. Instead, she  
23 found that the Union had failed to establish that the announcement had a generalized effect or  
24 continuing impact on the terms and conditions of employment. She found that the Union’s  
25 argument to the contrary was “speculation” with no “factual support.” Her finding was correct  
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27 <sup>1</sup> To avoid confusion, this brief refers to the Phase I case complexity measuring system  
28 announced in January 2022 as the “Phase I measuring System” and refers to the Client Case  
Management System as the “CCMS.”

1 and should be upheld.

2 The Union’s third exception is to the finding that the Union failed to establish the Phase I  
3 measuring System announcement was made without giving the Union notice of opportunity to  
4 bargain over the announcement. However, it was undisputed that the County repeatedly invited  
5 the Union to discuss the Phase I measuring System but the Union failed to accept that invitation.  
6 Therefore, the Hearing Officer’s finding that was well-founded and should be adopted.

7 For all of the reasons stated below, the County requests that this Commission adopt the  
8 Hearing Officer’s recommendation as its final decision.

9 **II. LEGAL ANALYSIS**

10 **A. THE UNION’S EXCEPTION TO THE FINDING THAT “THE UNION HAS**  
11 **NOT ESTABLISHED THAT THE CHANGE CONCERNED A MATTER**  
12 **WITHIN THE SCOPE OF REPRESENTATION” PROVIDES NO BASIS**  
13 **TO MODIFY OR REJECT THE HEARING OFFICER’S**  
14 **RECOMMENDATION**

15 **1. The Union May Not Dispute the County’s August 2021 Requirement**  
16 **that DPDs Maintain Case Records in the CCMS**

17 This UFC originally asserted two charges: “refusal to bargain and bad faith bargaining”  
18 and “unilateral change.” (2nd Am. Charge at 3-5.) On July 18, 2022, the Commission granted the  
19 County’s motion to dismiss the charge of refusal to bargain and bad faith bargaining, leaving only  
20 the charge for unilateral change for resolution. (*See* Answer to 2nd. Am. Charge at 1-2.)

21 The unilateral change charge alleged that a January 12, 2022 email from Public Defender  
22 Ricardo Garcia announcing the Phase I complexity measuring system constituted an unlawful  
23 unilateral change: “On January 12, 2022, without bargaining with the Union, the Department  
24 implemented its ‘CCMS Phase I case Complexity Measures.’” (2nd. Am. Charge at 5.) Thus, the  
25 unilateral change charge was based *only* on the January 12, 2022 announcement of the Phase I  
26 measuring System. The Union’s counsel confirmed that limited scope in his opening statement:

27 This is a pretty limited case with limited evidence attached. This  
28 case involves a case complexity management system that the Union

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alleges was unilaterally implemented by the L.A. County Public Defender’s Office.

...

The County on January 22, 2022, went ahead and implemented what they had come up with without any input from the Union. We believe that amounts to a unilateral change in working conditions and we ask after all the evidence is presented, that the hearing officer recommend that the committee [sic] find that a unilateral charge -- by the County.

(Tr. Vol. I at 10:23-11:2, 12:19-13:1.)

However, the Union’s first exception is based on a *different* action: the County’s August 2021 requirement that all DPDs maintain case records in the electronic CCMS database rather than in paper records. (Exceptions at 2.)<sup>2</sup> The County announced the requirement that DPDs use the CCMS on August 11, 2021, *five months before* Mr. Garcia announced the Phase I measuring System. But the Union failed to dispute that requirement in its unilateral change or otherwise. As the Hearing Officer found, “The August 11, 2021 policy memo . . . is not the subject of the instant charge. The policy requiring the use of CCMS to record client and case file data was not challenged by the Union.” (Report at 8.)

The Commission should therefore reject the Union’s attempt to challenge the CCMS requirement in this matter. Any charge based on that issue is untimely under ERCOM Rule 6.01, which provides that “[a] charge shall be deemed untimely and subject to dismissal if filed with the commission in excess of one hundred and eighty (180) days following the occurrence of the alleged act or acts on which the charge is based, or the date on which the charging party knew or should have known of said conduct.” The Union and its members were actually or constructively aware of the CCMS policy memo when it was issued on August 11, 2021. (*See, e.g.*, Tr. Vol. II at 26:3-7 (Union president testifying that seeing written policy “refreshes my recollection that the policy was in place.”) Yet the Union did not reference the August 2021 requirement in the Second Amended Charge, much less include that requirement in its unilateral change charge. To the

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<sup>2</sup> *See also* Report at 5 (discussing August 2021 requirement); County Ex. 1 (August 11, 2021 policy memorandum requiring that CCMS be used as “the official system of record and replace[] the paper file”).

1 contrary, the Union’s counsel expressly confirmed in his opening statement that this “limited  
2 case” related *only* to the January 2022 Phase I measuring System announcement. (Tr. Vol. I at  
3 10:23-11:2, 12:19-13:1.)

4 Therefore, the Commission should reject the Union’s first exception as untimely and  
5 outside the scope of this UFC.

6 **2. The Union’s Exception Lacks Merit**

7 The Hearing Officer found that the County’s adoption of the CCMS to be a “clear  
8 management right under ERO § 5.040.080.” (Report at 8-9.) That finding was correct. Section  
9 5.040.80 provides that “[i]t is also the exclusive right of the county to direct its employees . . . and  
10 determine the methods, means and personnel by which the county’s operations are to be  
11 conducted.” This right would certainly encompass the right to require DPDs to keep case records  
12 in an electronic database rather than on paper. PERB has also recognized that directing the work  
13 force and determining what work is to be performed by employees is a managerial prerogative, at  
14 the core of managerial control, and not subject to bargaining. (*Davis Joint Unified School District*  
15 (1984) PERB Decision No. 393.) “The Board has held that the assignment of duties is not a  
16 mandatory subject within the scope of representation if the newly assigned duties are reasonably  
17 related to existing duties.” (*City and County of San Francisco* (2004) PERB Dec. No. 1608-M.)  
18 Because the County’s requirement that DPDs maintain case information in the CCMS was an  
19 exclusive management right, the requirement was not a matter within the scope of bargaining.

20 The Union’s exception does not demonstrate otherwise. It merely notes that the CCMS  
21 was not rolled out uniformly within the Public Defender’s Office, and that some units began  
22 using the system after October 2020. (Exceptions at 2.) This is a *non sequitur*. Whether the  
23 requirement was implemented all at once or unit-by-unit, the County had the exclusive right to  
24 require that DPDs use the CCMS rather than paper records. The Commission should reject this  
25 exception to the Report.

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1           **B.       THE UNION’S EXCEPTION TO THE FINDING THAT THE CHANGE**  
2           **DID NOT CONCERN A MATTER WITHIN THE SCOPE OF**  
3           **REPRESENTATION PROVIDES NO BASIS TO MODIFY OR REJECT**  
4           **THE HEARING OFFICER’S RECOMMENDATION**

5           The Union’s second exception is to the Hearing Officer’s alleged finding that Mr.  
6 Garcia’s January 2022 announcement of the Phase I measuring System did not concern a matter  
7 within the scope of representation. (Exceptions at 2-5.) The Union argues that “from August 2021  
8 to January 2022, the Department made wholesale changes to how the public defenders manage  
9 their cases. Such a change to such a large part of the employees’ duties is no doubt within the  
10 scope of representation.” This argument fails for at least three reasons.

11           First, the exception disputes a finding the Hearing Officer did not make. She found that  
12 the Union failed to establish that the August 2021 *requirement that DPDs use the CCMS*  
13 *database* concerned a matter within the scope of representation. (Report at 8-9.) But she did not  
14 make an express finding as to whether the January 2022 announcement of the Phase I measuring  
15 System was within the scope of representation. (*See id.*) Instead, she found that the Union failed  
16 to establish that this announcement “had a generalized effect or continuing impact on terms and  
17 conditions of employment.” (*Id.* at 10.) The Commission should reject the Union’s exception to a  
18 finding that does not exist.

19           Second, this exception, like the first one, improperly seeks to include the August 2021  
20 CCMS memo in the unilateral change charge. The exception states that “*From August 2021 to*  
21 *January 2022*, the Department made wholesale changes to how the public defenders manage their  
22 cases.” (Exceptions at 6 (emphasis added).) However, as discussed above, the unilateral change  
23 charge is *exclusively* based on Mr. Garcia’s January 12, 2022 announcement of the Phase I  
24 measuring System. The Union therefore waived any purported right to base a charge on the  
25 CCMS requirement in place from August 2021 to present.

26           Third, the Hearing Officer correctly rejected the Union’s argument that the Phase I  
27 measuring System impacted DPD terms and conditions of employment as speculative and lacking  
28 in evidence. As the Union acknowledges, the Phase I measuring System uses only case

1 information that DPDs input into the CCMS. (*See* Exceptions at 6; Tr. Vol. II at 75:24-76:7  
2 (testimony from Chief Information Officer, Mohammed Al Rawi.) The system does not rely on  
3 any information outside of the CCMS. (*Id.*)

4           However, the Union failed to produce any evidence that the DPDs’ duty to input case  
5 information into the CCMS *was part of the Phase I measuring System*. To the contrary, it was  
6 undisputed that this requirement was implemented pursuant to the August 11, 2021 policy memo.  
7 (*See* County Ex. 1 (8/11/21 memo); Report at 5, 8 (discussing memo).) That memo was issued  
8 five months before the County announced the Phase I measuring System. In other words, the  
9 Phase I measuring System operated based on information that DPDs were *independently* required  
10 to input into the CCMS. The measuring system itself did not impose additional duties on the  
11 DPDs.

12           It was also undisputed that the Phase I measuring System did not affect DPD workloads.  
13 Mr. Garcia’s January 12, 2022 email expressly stated that the Phase I system would not be used to  
14 determine attorney workloads. (Union Ex. 1A.) Administrative Deputy Jon Trochez confirmed  
15 that any use of the measuring system “would be negotiated with the Union prior to  
16 implementation.” (Tr. Vol. II at 56:21-57:13, 48:16-49:10.) The Union offered no evidence to the  
17 contrary. Rather, as the Hearing Officer found, the Union offered only “speculation” regarding  
18 the use of the Phase I measuring System, “but there was no factual support for that conclusion.”  
19 (Report at 10.)

20           Thus, the fact that the Phase I measuring System utilized data already in the CCMS is no  
21 basis to reject the Hearing Officer’s findings. The DPDs had an independent duty to input that  
22 information, and the Phase I measuring System did not use the data to affect DPD workloads.

23           **C.     THE UNION’S EXCEPTION TO THE FINDING THAT THE UNION HAD**  
24                   **AN OPPORTUNITY TO BARGAIN PROVIDES NO BASIS TO MODIFY**  
25                   **OR REJECT THE HEARING OFFICER’S RECOMMENDATION**

26           The final exception the Union raises is to the Hearing Officer’s finding that “the Union  
27 has not established that the action was taken without giving the [Union] notice of opportunity to  
28 bargain over the change.” (Report at 9.) The Commission should reject this exception as well.

1            First, as the Hearing Officer noted, the Commission dismissed the portion of the UFC that  
2 alleged a refusal to bargain by the County “and the parties agree that those allegations were not  
3 before the Hearing Officer.” (Report at 10; Answer to 2nd Am. Charge at 1-2.) The Union itself  
4 admits the issue of its opportunity to bargain was “not . . . at issue” in this proceeding.  
5 (Exceptions at 6.) Accordingly, the Commission should reject this exception as relating to an  
6 issue outside the scope of this charge.

7            Second, the Hearing Officer found that “Mr. Trochez did reach out to the prior union  
8 president in August 2021 and did not receive a response.” (*Id.* at 9.) As the Union acknowledges,  
9 Mr. Trochez testified he “reached out to then union president Christine Rodriguez to provide  
10 input” to the committee developing the Phase I measuring System in August 2021. (Exceptions at  
11 8.) Mr. Trochez further testified that he sought to include the Union because the County “felt that  
12 it was important to engage early and throughout the process” because the parties would  
13 eventually need to negotiate the standards for using the complexity system, “so it would be best to  
14 start early and often rather than at the end of it.” (Tr. Vol. II at 44:24-45:11.)

15            Mr. Trochez confirmed that the Union failed to respond to the County’s outreach: The  
16 County “made several attempts to engage and meet and for whatever reason the delay was on the  
17 labor side, but I don’t know specifically why.” (*Id.* at 54:12-16.) The Union offered no evidence  
18 to contradict Mr. Trochez’s testimony or to explain its failure to accept the County’s invitation.  
19 Therefore, the Hearing Officer was justified in concluding that the Union was given the  
20 opportunity to bargain but did not request to do so.

21            **D.        THE UNION’S EXCEPTIONS ARE ULTIMATELY IRRELEVANT**

22            To prove an unlawful unilateral change, the charging party must establish by a  
23 preponderance of the evidence that: (1) the employer took action to change an existing policy or  
24 past practice; (2) the change concerned a matter within the scope of representation; (3) the action  
25 was taken without giving the exclusive representative notice or opportunity to bargain over the  
26 change; and (4) the change has a generalized effect or continuing impact on terms and conditions  
27 of employment. (*Fairfield-Suisun Unified School District* (2012) PERB Decision No. 2262, p. 9,  
28 citing *Grant Joint Union High School District* (1982) PERB Decision No. 196, p. 10; *Walnut*



1 *Valley Unified School District* (1981) PERB Decision No. 160, p. 5; see also *Vernon Fire*  
2 *Fighters, Local 2312 v. City of Vernon* (1980) 107 Cal.App.3d 802, pp. 822-823.)

3 Here, the Hearing Officer also found that the Union failed to establish the fourth element  
4 of its unilateral change charge: that “the change [to the complexity system] has a generalized  
5 effect on continuing impact on terms and conditions of employment.” (Report at 10-11.) The  
6 Hearing Officer found that the Union offered only “speculation” with no “factual support.” (*Id.* at  
7 10.) *The Union did not file an exception to this finding.* Therefore, the Union does not dispute that  
8 it failed to establish an essential element of its charge.

9 Accordingly, the Union’s exceptions are irrelevant. Even if the Hearing Officer’s findings  
10 for which the Union takes exception are erroneous, the Union would nevertheless have failed to  
11 carry its burden of proving all elements of this charge. The Commission may and should dismiss  
12 the unilateral change charge on this basis.

13 **III. CONCLUSION**

14 The Union’s exceptions provide no basis for modification or rejection of the Hearing  
15 Officer’s recommendations. Accordingly, the County requests that the Commission reject and/or  
16 deny the Union’s exceptions and adopt the Hearing Officer’s Report as its final decision.

17  
18 Dated: March 5, 2024

Respectfully submitted,

LIEBERT CASSIDY WHITMORE

19  
20 By:

*/s/ Viddell Lee Heard*

Adrianna E. Guzman  
Viddell Lee Heard  
Attorneys for Respondent  
COUNTY OF LOS ANGELES,  
PUBLIC DEFENDER’S OFFICE

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: **6033 West Century Boulevard, 5th Floor, Los Angeles, California 90045.**

On **March 5, 2024**, I served the foregoing document(s) described as **RESPONDENT’S RESPONSE TO CHARGING PARTY’S EXCEPTIONS TO HEARING OFFICER’S REPORT** in the manner checked below on all interested parties in this action addressed as follows:

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Andrea L. Dooley Hearing Officer 953 W. MacArthur Blvd., #12 Oakland, CA 94608 <a href="mailto:andrealdooley@gmail.com">andrealdooley@gmail.com</a>	

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Executed on **March 5, 2024**, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

*/s/ Linda Tokubo*  
Linda Tokubo