

**EXECUTIVE SUMMARY
CASE UFC 002-22 AMENDED**

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3 1. Unfair Employee Relations Practice Charges

4 UFC 002-22 AMENDED Los Angeles County Public Defender’s Union (LAPDU) and
5 Los Angeles County Public Defender’s Office (PD) (Unilateral Workload Change)

6 The Commission moved the Unfair Practice Charge to hearing in part on July 18, 2022.
7 The Commission moved to dismiss the bad faith bargaining allegation and moved the
8 charge of a unilateral change in working conditions allegation to hearing.

9 This is an alleged violation of County Employee Relations Ordinance (ERO)
§5.04.240(A)(1) and (3).

10 2. Synopsis

11 LAPDU alleges that the PD violated the Ordinance by announcing, on January 12, 2022,
12 the implementation of “CCMS Phase I Case Complexity,” which was intended to utilized
13 data in the recently implemented Client Case Management System (CCMS) to evaluate
14 case complexity measures. LAPDU believed the implementation of Phase I of this
15 practice would alter workloads for Deputy Public Defenders (DPDs) and that the case
16 complexity factors to be used were not accurate or empirically based.

17 3. Key Facts

18 After consultation with a committee which include DPDs, CCMS was implemented
19 beginning in October 2021 with no objection from the Union. The Union and PD
20 engaged in bargaining throughout 2021, and met in December 2021 to discuss the use of
21 case complexity measures (Phase I). The PD requested that the Union “sign off” on Phase
22 I but the Union declined to do so. The PD announced the intention to begin using the case
23 complexity measures rather than paper-based static data that had previously been used, in
24 order to better inform the Board of Supervisors of their work, and committed to working
25 with the Union on “Phase II” measures that might affect workload. Phase II is not at issue
26 in this case.

27 4. Recommendation

28 The Hearing Officer recommends that the Unfair Practice Charge be dismissed.

29 5. Other Relevant Information

30 N/A

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6 BEFORE THE EMPLOYEE RELATIONS COMMISSION
7 OF THE COUNTY OF LOS ANGELES

8 LOS ANGELES COUNTY PUBLIC
9 DEFENDERS UNION, LOCAL 148,

10 Union,

11 and

12 LOS ANGELES COUNTY PUBLIC
13 DEFENDER'S OFFICE,

14 Employer.

15 (Grievance re: Workload)

Case No. UFC-002-22 AMENDED

HEARING OFFICER'S REPORT –
FINDINGS OF FACT AND
RECOMMENDED CONCLUSIONS OF
LAW

16 INTRODUCTION

17 Los Angeles County Public Defenders Union, Local 148 (Union) charged Los Angeles
18 County Public Defender's Office (PD or Employer) with violations of County Employee
19 Relations Ordinance (ERO) §5.04.240(A)(1) and (3). The Los Angeles County Employee
20 Relations Commission moved this matter to hearing on July 18, 2022, and assigned the
21 undersigned Hearing Officer to serve as the neutral decision-maker in this case. The matter came
22 for hearing via video conference on March 7, 2023, and September 11, 2023. The parties
23 submitted this matter to the Hearing Officer after presentation of evidence, oral arguments, and
24 written briefs.
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1 **APPEARANCES**

2 For the Union:

3 Justin Crane, Esq.
4 The Myers Law Group, APC
5 9327 Fairway View Place, Suite 100
6 Rancho Cucamonga, CA 91730

7 For the Employer:

8 Viddell Lee Heard, Esq.
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10 6033 W. Century Blvd.
11 Los Angeles, CA 90045

12 **ISSUE**

- 13 1. Did the Employer violate ERO §§5.04.240(A)(1) and (A)(3) by making a unilateral
14 change in workload standards for Public Defenders?
15 2. If any such violations occurred, what is the proposed remedy?

16 **RELEVANT CONTRACT AND POLICY PROVISIONS**

17 **Employee Relations Ordinance § 5.04.080 – County Rights**

18 It is the exclusive right of the county to . . . set standards of services to be offered to the
19 public, and exercise control and discretion over its organization and operations. It is
20 also the exclusive right of the county to direct its employees, . . . and determine the
21 methods, means and personnel by which the county’s operations are to be conducted.

22 **Employee Relations Ordinance § 5.04.090 – Consultation and Negotiation – Scope**

23 A. All matters affecting employee relations, including those that are not subject to
24 negotiations, are subject to consultation between management representatives and the
25 duly authorized representatives of affected employee organizations. Every reasonable
26 effort shall be made to have such consultation prior to effecting basic changes in any
rule or procedure affecting employee relations.

B. The scope of negotiation between management representatives and the representatives
of certified employee organizations includes wages, hours, and other terms and
conditions of employment within the employee representation unit.

**Employee Relations Ordinance § 5.04.240 - Unfair employee relations practices
designated—Corrective action.**

A. It shall be an unfair employee relations practice for the county:

1. To interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this chapter;
2. To dominate or interfere with the formation of any employee organizations or contribute financial support to it, provided that the county may permit the use of county facilities, make dues deductions, and permit employees who are officers or representatives of employee organizations to confer with county officials during working hours without loss of time or pay, subject to applicable regulations;
3. To refuse to negotiate with representatives of certified employee organizations on negotiable matters.

RECOMMENDED FINDING OF THE FACTS

1. In 2017, the PD began to develop a Client Case Management System (CCMS). Tr. II 60:3-11.¹
2. CCMS is an electronic database that was intended to replace the existing paper files and other decentralized legacy systems. Tr. II 12:18-21 and 62:20-63:5.
3. In or about June 2020, The PD organized a “steering committee” to assist with implementation of CCMS which included representatives from management as well as Deputy Public Defenders who were members of the bargaining unit. Tr. II, 35: 18-22, 67:23-69:2. These employees were not designees of or selected by the Union.
4. In October 2020, CCMS was implemented for use in adult misdemeanor and felony units, with other units being added subsequently. Tr. II 26-27; 61; and 79.
5. On May 24, 2021, Los Angeles County Public Defenders Union, Local 148, was a certified employee organization which is the certified employee representative of the

¹ References to the transcript will be made to the volume (I or II), page: lines.

1 Public Defenders employed by the Los Angeles County Public Defender’s Office, as
2 defined by Employee Relations Ordinance §5.04.030, after a decertification effort
3 against their prior representative, AFSCME Council 36. Testimony of Tris Carpenter
4 and Garrett Miller.

- 5
6 6. On August 11, 2021, the PD issued a policy memo entitled “A20 Case File
7 Documentation Standards,” which stated, in relevant part:

8 The Department’s Client Case Management System (CCMS) is the official
9 system of record and replaces the paper file. It shall be used to organize, document,
10 maintain and store the public defender case file. Case and client information in
11 CCMS shall be documented completely. The attorney shall routinely review the case
12 and client information to ensure information is documented and accurate.

13 DX 1.

- 14 7. In August 2021, Jon Trochez, the Administrative Deputy for the PD’s Office reached
15 out to Union president Christine Rodriguez to request input about two committees
16 that were being formed for the purpose of discussing the case management system as
17 well as case complexity as it related to workload. The Union did not accept Mr.
18 Trochez’s invitation until December 2021. Tr. II, 42:23-45:11.
- 19 8. In December 2021, the parties met to discuss proposals regarding the establishment of
20 a workload committee, hiring consultants, and case complexity factors used in
21 CCMS. Tr. II 34: 6-20; 45; and 71:11-72:12.
- 22 9. Mr. Trochez testified that the Employer “desired union participation because they felt
23 that it was the only way to engage in a meaningful result in assessing the proper
24 caseloads for attorneys to carry. . . It was important to engage early and throughout
25 the process knowing that the eventual product, which would be the negotiation of
26

1 standards, would have to be with labor and so it would be best to start early and often
2 rather than at the end of it.” Tr. II 45.

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4 10. In the Union’s view, the proposed case complexity system contained inaccuracies,
5 and that it should have been developed by “subject matter experts” rather than
6 attorneys in their office. Tr. II 20-21; and 28-29.

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8 11. On January 12, 2022, Public Defender Ricardo D. Garcia sent an email to all PD
9 attorneys regarding “CCMS Phase I Case Complexity.” UX 1D. It states, in relevant
10 part:

11 Unlike the old system, and per my directive, this system was designed by line
12 managers and trial lawyers forming the CCMS Steering Committee and reviewed by
13 your colleagues from across the department who participated in office wide peer
14 review. . .

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

22 12. The Employer acknowledges that “any decision about attorney workloads would be
23 negotiated with the Union prior to implementation.” Tr. II 48:16-50:16 and 56:12-
24 57:13.

25 13. On or about January 18, 2022, the Union filed a Charge Alleging Unfair Employee
26 Relations Practice Against Management alleging that the PD had “unilaterally
implemented its own program to determine appropriate caseloads without the Union’s
input.” JX 1.

14. On or about May 13, 2021, the Union filed an Amended Charge. JX 2.

1 15. On or about April 21, 2022, the PD filed a Motion to Dismiss Unfair Practice Charge.
2 JX 3.

3 16. On June 15, 2022, the Union filed a Second Amended Complaint alleging that the
4 January 12, 2022, "CCMS Phase I Complexity Measures" memo from Mr. Garcia
5 was a unilateral change over a subject of bargaining. JX 4.
6

7 17. The Second Amended Complaint included an allegation that the Employer had
8 refused to bargain and engaged in bad faith bargaining. Id.

9 18. On July 6, 2022, the Department moved to dismiss the Second Amended Complaint.
10 JX 5. The Union responded on July 15, 2022. JX 6.

11 19. The Commission moved this Unfair Practice Charge to hearing in part on July 18,
12 2022, dismissing the bad faith bargaining allegation. JX 7.

13 20. On February 15, 2023, the PD answered the Second Amended Charge, denying the
14 allegations contained therein. JX 8.

15 21. This matter was heard on March 7, 2023, and September 11, 2023, via video
16 conference.
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18 **DISCUSSION AND RECOMMENDED CONCLUSIONS OF LAW**

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20 As the charging party, the Union bears the burden of demonstrating that the Employer
21 has violated ERO § 5.04.240 (A)(1) and (3). *Sargent Fletcher, Inc. v. Able Corp* (2003) 110
22 Cal.App.4th 1658, 1667, citing Evid. Code § 500. In order to prove the unlawful unilateral
23 change, the Union must establish by a preponderance of the evidence that: 1) the employer took
24 action to change an existing policy or past practice; 2) the change concerned a matter within the
25 scope of representation; 3) the action was taken without giving the exclusive representative
26 notice or opportunity to bargain over the change; and 4) the change has a generalized effect or

1 continuing impact on terms and conditions of employment. *Fairfield-Suisun Unified School*
2 *District* (2012) PERB Decision No. 2262, p. 9.

- 3 1. The Union has established that the Employer took action to change an existing policy
4 or past practice.

5 It is undisputed that it has always been the practice of the PD's Office for attorneys to
6 keep records of their case files and clients, and that remains unchanged by the implementation
7 of CCMS. Both parties agree that, in October 2020, attorneys who represented adults in
8 misdemeanor and felony units were expected to begin using CCMS to keep those records. Other
9 units later adopted CCMS, and by August 2021, CCMS was implemented throughout the PD's
10 office. The August 11, 2021, policy memo entitled "A20 Case File Documentation Standards"
11 is not the subject of the instant charge. The policy requiring the use of CCMS to record client
12 and case file data was not challenged by the Union.
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14 The Union alleges that Mr. Garcia's January 12, 2022, memo constitutes the unlawful
15 unilateral change. The action that Mr. Garcia's memo describes is "I want to address how the
16 case complexity measures will be used during the initial rollout (Phase I). **The initial phase is**
17 **to change the current system from a static caseload measure to a dynamic and**
18 **comprehensive case complexity measure.**" UX D. This is a change from past practice: Mr.
19 Garcia was articulating the PD's expectation that the case management system would be used to
20 measure "dynamic and comprehensive case complexity" rather than a status caseload measure.
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- 23 2. The Union has not established that the change concerned a matter within the scope of
24 representation.

25 The adoption of CCMS seems to be a clear management right under ERO §5.040.080. "It
26 is the exclusive right of the county to . . . set standards of services to be offered to the public,

1 and exercise control and discretion over its organization and operations. It is also the exclusive
2 right of the county to direct its employees, . . . and determine the methods, means and
3 personnel by which the county’s operations are to be conducted.”

4 Union president Garrett Miller agreed that under PD policy, Deputy PDs were required
5 to input case information into the CCMS. Tr. II 25:3-13. It follows from that requirement that
6 the Employer can use the information gathered in CCMS in a manner with supports their
7 services offered to the public, and to exercise control and discretion over its organization and
8 operations.

9
10 For reasons that will be discussed in the next session, it’s also clear from the evidence
11 that while the Employer did not consider the January 2022 memo to be a change that
12 concerned a matter within the scope of representation, they still sought to engage the Union
13 and its members in a meaningful way in the process of implementing the change.

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15 3. The Union has not established that the action was taken without giving the exclusive
16 representative notice or opportunity to bargain over the change.

17 There are several notable issues here. First, the Employer did include Deputy PDs
18 throughout every stage of the CCMS implementation process. While there is no evidence that
19 the Union was included in the design of the committee or the selection of its participants, Mr.
20 Trochez did reach out to the prior union president in August 2021 and did not receive a
21 response.

22 Second, the parties discussed case complexity factors in December 2021. While the
23 Union thought the factors which had been developed by their own colleagues in the bargaining
24 unit were “arbitrary” and should have been informed by “subject matter experts,” Mr. Garcia’s
25 January 2022 memo did not specifically identify or establish case complexity factors, and there
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1 was no evidence that case complexity factors were a fixed and determined change that was not
2 open to additional discussion or feedback.

3 Notably, the Employer acknowledged in both the January 2022 memo and at the
4 hearing that the use of the CCMS case complexity measures would only be used for
5 determining workload standards after working with the Union. The memo states: “This phase
6 does not define workload threshold to determine case assignments by Head Deputies. Workload
7 thresholds will be researched and explored collaboratively in a subsequent phase (Phase II),
8 including input from internal and external subject matter experts, and our labor partners.” UX D.
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10 Finally, the Commission already dismissed the bad faith bargaining and refusal to bargain
11 allegations contained in the Second Amended Complaint, and the parties agree that those
12 allegations were not before the Hearing Officer.

13
14 4. The Union has not established that the change has a generalized effect or continuing
15 impact on terms and conditions of employment.

16 The Union did not present evidence at the hearing that Mr. Garcia’s pronouncement of
17 intent “to change the current system from a static caseload measure to a dynamic and
18 comprehensive case complexity measure” has had any effect on or continuing impact to terms
19 and conditions of employment. There was speculation that the case complexity measures would
20 be inaccurate or inadequate and thus workloads would be imbalanced, but there was no factual
21 support for that conclusion. There was also no evidence that prior case complexity standards had
22 been accurate or not, or had adversely affected workload for attorneys or not.

23 It is conceivable that inaccurate case complexity measures would result in workloads that
24 were not properly weighted, but the opportunity to meet and confer over the case complexity
25 standards as they relate to workload had not occurred at the time of the hearing and so the
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1 Hearing Officer cannot conclude that there will be a continuing impact from the usage of
2 comprehensive case complexity measures at this time.

3 **Therefore, I recommend that the Unfair Practice Charge in this matter be**
4 **dismissed.**

5 Dated: January 3, 2024.
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9 Andrea L. Dooley, Hearing Officer

1 **APPENDIX A**
2 **EXHIBIT LIST**

3 Joint Exhibits

- 4 1. Charge Alleging Unfair Employee Relations Practice Against Management, Case No.
5 002-22, dated January 18, 2021
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7 2. Amended Charge, dated May 13, 2021
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9 3. County Motion to Dismiss Unfair Practice Charge, dated April 21, 2022
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11 4. Second Amended Charge, dated June 15, 2022
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13 5. Respondent County of Los Angeles Public Defender's Office's Motion to Dismiss
14 Second Amended Charge, dated July 6, 2022
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16 6. Charging Party's Response to Motion to Dismiss Second Amended Charge, dated July
17 15, 2022
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19 7. Los Angeles County Employee Relations Commission Meeting Minutes, dated July 18,
20 2022.
21
22 8. Respondent County of Los Angeles Public Defender's Office's Answer to Second
23 Amended Charge, dated February 15, 2023

24 Union Exhibits

- 25 1. Exhibits to Second Amended Charge dated June 15, 2022 (JX 4)
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27 A. County Management Proposal #3, dated December 9, 2021
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29 D. Ricardo D. Garcia E-mail Re: CCMS Phase I Case Complexity, dated January
30 12, 2022.

31 Department Exhibits

- 32 1. A20 Case File Documentation Standards, dated August 11, 2021
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**APPENDIX B
WITNESSES**

1. Tris Carpenter of California Labor Strategies testified about the union’s history and bargaining with the PD.
2. Union President Garrett Miller testified about the CCMS Steering Committee; CCMS implementation; the prior recordkeeping system; and the Union’s objections to the case complexity measures.
3. Administrative Deputy Public Defender Jon Trochez testified about Phase I implementation and engagement with the Union.
4. Mohammed Al-Rawi, Chief Information Officer for the PD, testified about CCMS implementation and the prior recordkeeping system.

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