

LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of

Los Angeles County
Public Defenders Union
Charging Party

vs.

Los Angeles County
Public Defenders Office
Respondent

Case no. UFC 004-23

Hearing: January 18, 2024
Virtual via Zoom

APPEARANCES:

For the Charging Party: Justin Crane, Meyers Law Group

For the Respondent: Videll Lee Heard, Liebert Cassidy Whitmore

BEFORE: David P. Beauvais, Hearing Officer

INTRODUCTION

The above captioned matter was heard by Hearing Officer David P. Beauvais selected by the Los Angeles County Employee Relations Commission. The hearing was conducted on January 18, 2024. The Charging Party introduced four (4) exhibits and the Respondent introduced four (4) exhibits. The parties also stipulated to one joint exhibit (the UFC). All exhibits were identified, received and made part of the record with the exception of Respondent four, which was accepted provisionally. Following

the hearing, the parties submitted written argument which was received by the Hearing Officer on May 31 (Union) and June 5, 2024 (Respondent).

ISSUE

Did the Department commit an Unfair Labor Practice (ULP) when on January 12, 2022, without bargaining with the Union, the Department implemented its “CCMS Phase I case Complexity Measures.”

BACKGROUND

On May 24, 2021, the Los Angeles County Public Defenders Union became the successor to AFSCME Council 36 after a successful decertification vote. The new Union immediately requested negotiations for a successor MOU. The parties commenced negotiations in September 2021. One of the proposals put forth by the Union was to negotiate a workload measurement system that would develop a reasonable workload metric for Public Defenders. On December 9, 2021, the County made a counter proposal for a study committee to discuss and develop recommendations for a caseload measurement system.

In the meantime, the County was already developing a caseload measurement system called the Case Complexity Measurement System (herein after CCMS). On January 12, 2022, the County implemented phase one of the system. This system was developed by a steering committee that included managers and trial attorneys. The Union filed an unfair labor practice (UFC 002-22) following implementation, contending any measurement system must be subject to bargaining. At the time of this

hearing (January 18, 2024), this charge had been heard and the Hearing Officer's report returned, but final adjudication by the Employee Relations Commission was pending.

On January 31, 2023, the County rolled out phase 2, wherein the CCMS was "activated". The Union responded with a second unfair labor practice charge on February 17, 2023. Specifically, the Union charged that *"The impact of this decision is to now use the Case Complexity System in this manner is significant. Inputting these elements of a case was not required previously and is a significant time expenditure which will affect the practice of all members of the bargaining unit. In addition to bargaining over the proposed change, Employers are required to bargain over the effects of the change. Here, bargaining unit members are being required to track their time, which has never been required before, in order to receive accurate case complexity scores."*

POSITION OF THE PARTIES

Union

The Union maintains the activation of the CCMS was a unilateral change in working conditions for attorneys in the Public Defenders office. Although the type of entries has not changed, the use of different fields to enter caseload information rather than just entering information in case notes is a complicated, time consuming task. The additional time necessary to make these entries has a direct negative impact on the Union members and should be subject to bargaining or consultation before implementation of this phase of the project.

Respondent

The Respondent contends input of all case information by Public Defenders has been mandatory since August 11, 2021, when the Department issued a policy memo requiring case files “*shall be documented and organized in a manner that accurately reflects the work done, the strategic decisions made, and the actions taken in a case.*” Respondent emphasizes the only change in the entry of case information is that there are required fields rather than just entering all the information in the case notes section. The Department also argues that at this point, the complexity scores are not being used to determine case load for each Public Defender, although that is the end goal.

TESTIMONY OF WITNESSES

Union

Garret Miller

Mr. Miller is a Deputy Public Defender. He has over ten years of service with the office. In February 2022 he became President of the Public Defenders Union. Currently he is an At-Large member of the Union’s board. Mr. Miller testified the CCMS was put into place to track cases and rate them by complexity. Mr. Miller stated the system is supposed to be a dynamic score that measures complexity; the system captures time and tasks to compute the score. Mr. Miller testified that the weight factors for the type of cases was discussed in negotiations, but not the system itself. Mr. Miller testified the Union objected because they anticipated the new system would require added time to enter the necessary information into the system. Mr.

Miller testified the Union was aware a new system was being developed when they requested negotiations for a successor MOU.

Joshua Fleshman

Mr. Fleshman joined the Los Angeles County Public Defender's office in April 2022. He has previous experience as a Public Defender in Kern County. Mr. Fleshman testified he was not familiar with the CCMS when he was hired, in his words, he learned on the job. Mr. Fleshman testified that there was a training video released after the January 31, 2023, email was sent out. Mr. Fleshman testified that unlike paper notes the system requires that you enter activities, usually in the "events" page. Mr. Fleshman stated the new system takes more time because different notes require entry into different types of pages. Mr. Fleshman said he doesn't make a lot of entries because it's not worth the time or effort.

County

Mohammed Al Rawi

Mr. Al Rawi is the Chief Information Officer (CIO) for the Public Defender's Office. He has held that position for four years. Mr. Al Rawi testified the CCMS is the culmination of a twenty-year vision to focus on client services. He testified that when he became CIO for the office the system was already in development. Mr. Al Rawi stated the system is still a pilot and there are further developments envisioned. Mr. Al Rawi said the CCMS is intended to factor in multiple client information to arrive at a complexity score. Mr. Al Rawi testified no new information is required to

be input by Public Defenders; rather the entry format has changed. Mr. Al Rawi demonstrated how the system works and gave examples of how data is entered into the system. Mr. Al Rawi testified Public Defenders are not restricted in how they write their notes, styles vary.

Angela Cheung

Ms. Cheung is a Head Deputy and has been with the Public Defender's office since 1999. She is the Deputy-in-Charge for several family courts. Ms. Cheung testified she has used the CCMS "extensively". Ms. Cheung testified Deputy Public Defenders were required to document events as they occurred both before and after the implementation of CCMS. Ms. Cheung said one could enter a party into the system in a matter of seconds. Ms. Cheung generally made the case that once one was familiar with the system it was quite simple to add information to cases.

DISCUSSION AND ANALYSIS

The Union describes this issue as simple and narrow. I concur with that observation. There was no dispute about the type or quantity of information required to be entered into the CCMS, that did not change. Rather, how the information is entered, and whether excessive time was incurred by Public Defenders making the entries. Based on the testimony of the witnesses and the documentary evidence, I conclude that the additional time needed to make the entries to different fields is de minimus and therefore not subject to consultation or bargaining.

My conclusion rests on the testimony of the witnesses in this case. Mr. Miller's testimony provided an overview of the bargaining history, but few details about effects of the changes in data entry into the system. Mr. Fleshman testified that he joined the Public Defender's office in April 2022, just a few months before the January 30, 2023, memo was promulgated. Mr. Fleshman also testified that although he knew how the system worked he rarely entered information into event fields because he felt it was too time consuming. Rather, as he had before January 30, 2023, he typically entered client visits and other contacts into case notes rather than creating a distinct event.

On the other hand, Mr. Al Rawi testified at length and in detail about the CCMS. Mr. Al Rawi testified the system was already being developed when he became the Chief Information Officer but worked on implementation since he joined the Department in 2020. Mr. Al Rawi testified the end goal is to have a measurement system that will factor in multiple types of client information to determine the complexity of each case. Mr. Al Rawi emphasized the program is not at that stage yet and no one is being evaluated based on their entries at this point. Mr. Al Rawi testified that the decisions regarding the direction of the program are made by a steering committee of Public Defenders, not the IT department. Mr. Al Rawi demonstrated how information is input into the system and how to navigate between fields to enter information or notes.

Angela Cheung is Deputy-in-Charge. She supervises family arraignment court and related family courts. She makes case assignments to Public Defenders in her section. Ms. Cheung testified she has extensive experience

with CCMS since its implementation in 2021. Ms. Cheung testified Public Defenders had to document parties and events prior to the January 30, 2023. Ms. Cheung testified that in her experience, it takes only a matter of seconds to navigate from one field to another and to enter a case party or event. The program is also pre-populated; for instance, when entering an expert witness, one need only enter the name, the rest of the contact information is automatically generated.

The Respondent cites *Claremont Police Officers Association v City of Claremont* (2006) 39 Cal 4th as the proper test to apply in the case at bar. In that case the City implemented a study utilizing a pre-printed form for officers making traffic stops. The study was intended to determine if racial profiling was occurring. As in this case, it was the use of the form that was at issue, not the impact of the study itself. The evidence demonstrated that it took about two minutes to complete the form and that the form would typically be used in traffic stops four to six times a day. The California Supreme court applied a three part test to determine whether the City had an obligation to consult with the Association prior to implementation of the study; “*In summary, we apply a three-part inquiry. First, we ask whether the management action has “a significant and adverse effect on the wages, hours, or working conditions of the bargaining-unit employees.” (Building Material, supra, 41 Cal.3d at p. 660, 224 Cal.Rptr. 688, 715 P.2d 648.) If not, there is no duty to meet and confer. (See § 3504; see also ante, 47 Cal.Rptr.3d at pp. 74-75, 139 P.3d at pp. 536-537.) Second, we ask whether the significant and adverse effect arises from the implementation of a fundamental managerial or policy decision. If not, then, as in Building*

Material, the meet-and-confer requirement applies. (Building Material, supra, 41 Cal.3d at p. 664, 224 Cal.Rptr. 688, 715 P.2d 648.) Third, if both factors are present-if an action taken to implement a fundamental managerial or policy decision has a significant and adverse effect on the wages, hours, or working conditions of the employees-we apply a balancing test. The action “is within the scope of representation only if the employer's need for unencumbered decisionmaking in managing its operations is outweighed by the benefit to employer-employee relations of bargaining about the action in question.” (Building Material, supra, 41 Cal.3d at p. 660, 224 Cal.Rptr. 688, 715 P.2d 648.) In balancing the interests to determine whether parties must meet and confer over a certain matter (§ 3505), a court may also consider whether the “transactional cost of the bargaining process outweighs its value.” (Social Services Union, supra, 82 Cal.App.3d at p. 505, 147 Cal.Rptr. 126.)”

Here there is no change in the quantity or quality of the information required to be input into the system. The sole difference is how the information is inputted by using different fields rather than entering everything under case notes. The testimony of the Department witnesses established one can easily maneuver between fields in a matter of seconds and the program provides pre-populated information in some instances. Obviously, there is a learning curve with any changes in a program. Additionally, “tech savvy” individuals will adapt to changes more rapidly than others. But in this century, it is expected that any professional should be able to deal with changes in a program they already use.

In summary, the use of required fields to input information requires minimal (if any) additional time and therefore does not pose “*a significant and*

adverse effect on the wages, hours, or working conditions of the bargaining-unit employees.”

RECOMMENDATION

It is respectfully recommended the Commission adopt the findings and conclusions contained herein and dismiss the charge.

Respectfully submitted,

David P. Beauvais, Hearing Officer
DATE: June 11, 2024