

State of Colorado



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Governor

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MEETING MINUTES

November 17, 2020

The State Personnel Board met on November 17, 2020. Due to the COVID-19 pandemic, the Board held its meeting via a Zoom webinar.

The meeting was called to order at 8:35 a.m. Board Members Patricia Bangert, Karen Niparko, Sarah Wager, and Roxane White were present for the roll call via webinar. Rick Dindinger, Board Director, and Assistant Attorney General Amy Lopez, Board Counsel, were also present via webinar. Due to technical issues, Ms. Kelly was late for the roll call but joined the meeting shortly thereafter via webinar.

Members of the public also attended the meeting via webinar. In advance of the meeting, the Board posted information about the agenda and the webinar on its website.

I. REPORT OF DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA] AND REPORT OF THE DIVISION OF HUMAN RESOURCES [DHR].

Kara Veitch, Executive Director of DPA, reported on the state's total compensation plan and the statewide furlough necessitated by the state's budgetary crisis.

II. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE BOARD.

There were no Initial Decisions or other final orders reviewed this month.

III. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING.

A. Shannon Dye v. Department of Corrections, Youthful Offender System, Clinical Services Department, SPB 2021G003.

Following discussion of the Administrative Law Judge's Preliminary Recommendation, the Board acted as follows: Ms. Kelly moved to adopt the recommendation and deny Complainant's petition for hearing. Ms. Niparko seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Kelly, Ms. Niparko, Ms. Wager and Ms. White. Ms. Bangert voted in opposition.

By unanimous vote, the Board recessed at 9:20 a.m. so it could go into a joint rulemaking hearing with the Statewide Chief Human Resources Officer.

IV. JOINT RULEMAKING HEARING WITH THE STATEWIDE CHIEF HUMAN RESOURCES OFFICER.

The Board conducted a joint rulemaking hearing with Ramona Gomoll (the Statewide Chief Human Resources Officer) regarding proposed changes to the Board Rules in Chapter 7 (Separation). The rulemaking hearing started at 9:30 a.m.

Rick Dindinger (Board Director) and John Bartley (DPA's Deputy Director of DPA's Division of Human Resources) made staff presentations regarding the proposed changes to Chapter 7.

The Board and the Statewide Chief Human Resources Officer heard testimony from William Finger, Esq., and Michelle Brissette Miller, Esq., regarding the proposed changes to Chapter 7.

The record closed at the conclusion of the public testimony.

The Board deliberated on the proposed changes. Due to scheduling conflicts, Ms. Wager exited the meeting at 11:00 a.m. and Ms. Niparko exited at 11:10 a.m. Ms. Wager rejoined the meeting at 11:20 a.m. Ms. Niparko did not rejoin the meeting.

At the conclusion of deliberations, Board Chair Nora Kelly entertained motions to adopt the proposed changes, amend the proposed changes, or to reject the proposed changes to the Board Rules in Chapter 7.

First Motion. Ms. Kelly moved to repeal the Board Rules in the current version of Chapter 7 and to adopt the following proposed rules and the accompanying statements of basis and purpose as originally published on October 15, 2020:

- Board Rule 7-1, 7-3, 7-5, 7-6, 7-9, 7-11, 7-14, 7-19, and 7-20.

Ms. Kelly's motion stated that the specific authority of the State Personnel Board to promulgate these rules is found at Article XII, sections 13 and 14 of the Colorado Constitution; the State Personnel System Act, section 24-50-101, *et seq.*, C.R.S.; and the Administrative Procedure Act section 24-4-103, 105 and 106, C.R.S. Ms. Kelly's motion also stated that the purpose for adopting and revising these rules is: (a) clarification for the Board Rules for improved understanding and ease of use by stakeholders, including the general public; (b) removal of redundant information and simplifying language of procedural requirements; and (c) correction of typographical errors, grammatical errors, and formatting errors. Ms. Kelly's motion also stated that the Board finds, as required by section 24-4-103(4)(b), C.R.S., that the record of the rulemaking proceedings demonstrates the need for the rules; the proper statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated; the rules do not conflict with other provisions of law; and any duplication or overlapping was explained. Ms. White seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Bangert, Ms. Kelly, Ms. Wager and Ms. White. Ms. Niparko was not present for the vote.

Second Motion. Ms. Kelly moved to adopt proposed Board Rule 7-17 but with a modification to Board Rule 7-17(D)(6) so that the subpart will provide: "To an occupied position in the same class series as the eligible employee that is occupied by a certified employee. In such event, the offer

shall be to the highest level position in the same class series that does not result in a promotion.” Ms. Kelly’s motion cited specific authority of the Board, the purposes for adopting the rule, and the Board findings required by section 24-4-103(4)(b), C.R.S. Ms. Wager seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Bangert, Ms. Kelly, Ms. Wager and Ms. White. Ms. Niparko was not present for the vote.

Third Motion. Ms. Kelly moved to adopt proposed Board Rule 7-2 but with modifications so that it will provide:

Board Rule 7-2. Resignations.

- A. **Written notice of resignation.** An employee shall give written notice of resignation directly to the appointing authority at least fourteen (14) days before the employee’s last day of work. An email to the appointing authority satisfies the requirement of a written notice of resignation.
 - 1. The employee and appointing authority may mutually agree to less than fourteen (14) days between the resignation and the employee’s last day of work.
 - 2. An employee’s failure to provide at least fourteen (14) days’ notice may result in a delay in any payout of leave and a forfeiture of reinstatement privileges.
- B. **Verbal notice of resignation.** An employee who gives verbal notice of resignation of at least fourteen (14) days before the employee’s last day of work should note that verbal notifications may delay any leave payout and result in a forfeiture of reinstatement privileges.
- C. **Withdraw of resignation.** An employee may withdraw a resignation only if the employee requests to withdraw the resignation within seventy-two (72) hours of when the employee first gave notice of the resignation or if permitted at the discretion of the employee’s appointing authority. The employee’s request to withdraw the resignation must be in writing to the appointing authority or to human resources. An email to the appointing authority or to human resources satisfies the requirement of a written withdrawal.
- D. **Confirmation of resignation.** After seventy-two (72) hours from when the employee gives notice of the resignation, but prior to the employee’s termination date, the department shall give the employee a written Confirmation of Resignation that includes the following:
 - 1. Confirmation that the department received employee’s notice of resignation, the date of the resignation, the date of the employee’s last day at work, and the termination date if different from the last day of work;
 - 2. A statement that if the employee believes the resignation was coerced or forced, the employee may appeal the resignation to the Board;
 - 3. A statement that the deadline for filing an appeal to the Board is ten (10) days from the date of delivery of the Confirmation of Resignation; and
 - 4. The Board’s physical address, email address, website, telephone and facsimile numbers.
- E. **Delivery of the Confirmation of Resignation.** Proof of delivery of the Confirmation of Resignation may be established by:
 - 1. A dated return receipt from the United States Postal Service;

2. A dated return receipt from a commercial delivery service provider;
3. The employee's signature affixed to the Confirmation of Resignation;
4. An affidavit of hand-delivery; or
5. An affidavit attesting that the sender transmitted the Confirmation of Resignation to a valid email address combined with a copy of the email.

Ms. Kelly's motion cited specific authority of the Board, the purposes for adopting the rule, and the Board findings required by section 24-4-103(4)(b), C.R.S. Ms. Bangert seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Bangert, Ms. Kelly, Ms. Wager and Ms. White. Ms. Niparko was not present for the vote.

Fourth Motion. Ms. Kelly moved to adopt proposed Board Rule 7-4 but with modifications so that it will provide:

Board Rule 7-4. Job Abandonment.

- A. If an employee is absent without approved leave and advance notice for three (3) scheduled consecutive working days, the appointing authority, after making a reasonable effort to communicate with the employee, may construe the absence as a job abandonment and therefore an automatic resignation.
 1. In the case of a documented medical condition, employees may seek leave retroactively if the medical condition was of such nature that it prevented the employee from providing advance notice. In the event an employee provides medical documentation showing that the employee was unable to provide advance notice, appointing authorities shall not construe the absence as an automatic resignation
- B. Confirmation of Job Abandonment. The appointing authority shall give the employee a written Confirmation of Job Abandonment that includes the following:
 1. The dates of the employee's absence without approved leave;
 2. A statement that the absence is construed as an automatic resignation;
 3. The effective date of the employee's termination;
 4. A statement of whether the employee is eligible or not for rehire;
 5. A statement that if the employee believes the absence was justified, the employee may appeal the separation to the Board;
 6. A statement that the deadline for filing an appeal to the Board is ten (10) days from the date of delivery of the Confirmation of Job Abandonment; and
 7. The Board's physical address, email address, website, telephone and facsimile numbers.
- C. Proof of delivery of the Confirmation of Job Abandonment may be established by:

1. A dated return receipt from the United States Postal Service;
2. A dated return receipt from a commercial delivery service provider;
3. The employee's signature affixed to the Confirmation of Job Abandonment;
4. An affidavit of hand-delivery; or
5. An affidavit attesting that the sender transmitted the Confirmation of Job Abandonment to a valid email address combined with a copy of the email.

D. Employees who abandon their jobs maybe ineligible for rehire.

Ms. Kelly's motion cited specific authority of the Board, the purposes for adopting the rule, and the Board findings required by section 24-4-103(4)(b), C.R.S. Ms. White seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Bangert, Ms. Kelly, Ms. Wager and Ms. White. Ms. Niparko was not present for the vote.

The joint rulemaking hearing closed at 12:48 p.m.

Following the rulemaking hearing, the Board reconvened for its regular business at 12:49 p.m.

V. INITIAL DECISIONS OF THE ADMINISTRATIVE LAW JUDGES FOR POTENTIAL REVIEW UNDER § 24-4-105(14)(a)(II), C.R.S.

- A. Eric Scholl v. Department Corrections, Colorado Territorial Correctional Facility, SPB 2020B053.

The Board did not take any action.

VI. REVIEW OF MINUTES FROM THE OCTOBER 20, 2020, PUBLIC MEETING OF THE STATE PERSONNEL BOARD.

Ms. Bangert moved to approve the minutes as submitted. Ms. White seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Bangert, Ms. Kelly, Ms. Wager, and Ms. White. Ms. Niparko was not present for the vote.

VII. ADMINISTRATIVE MATTERS & COMMENTS.

- A. ADMINISTRATIVE MATTERS.

- By consensus, the Board meeting on January 19, 2021, will start at 8:00 a.m.

VIII. PROPOSED LEGISLATION OR RULEMAKING.

A joint rulemaking hearing with the Statewide Chief Human Resources Officer regarding Chapter 6 (Performance) is tentatively scheduled for January 19, 2021 at 9:00 a.m.

IX. EXECUTIVE SESSION.

The Board did not enter into executive session.

The Board meeting adjourned by consensus at 12:56 p.m

SIGNED THIS 15th DAY OF DECEMBER, 2020.

Nora Kelly, Chair

Sarah Wager, Vice Chair

Patricia Bangert, Board Member

Karen Niparko, Board Member

Roxane White, Board Member