

# State of Colorado



**Jared Polis**  
*Governor*

**Sarah Wager**  
*Board Chair*

**Rick Dindinger**  
*Board Director*

**State Personnel Board**  
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## **MEETING MINUTES**

March 21, 2023

The State Personnel Board met on March 21, 2023. The Board held its meeting via webinar using Zoom. Members of the public attended the meeting. In advance of the meeting, the Board posted information about the agenda and the webinar on its website.

The meeting was called to order at 9:01 a.m. Board Members Robert Lee, David Ruchman, Euell Thomas, and Sarah Wager were present for the roll call. Jenna Anderson, Esq. (Board Counsel) and Rick Dindinger (Board Director) were also present via webinar. Kimberley Dempster was excused.

### **I. REPORT OF THE DEPARTMENT OF PERSONNEL & ADMINISTRATION (DPA) AND REPORT OF THE DIVISION OF HUMAN RESOURCES (DHR).**

There was no report scheduled this month.

### **II. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL BY THE PARTIES TO THE STATE PERSONNEL BOARD.**

There were no Initial Decisions or other final orders for review on appeal by the parties.

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

#### **A. Gary Little v. Department Corrections, SPB 2023G007.**

Prior to the Board's discussion, Dindinger informed the Board that due to a scrivener's error, some of the dates in the Administrative Law Judge's Preliminary Recommendation should be modified from 2023 to 2022. Specifically, on page 5 at paragraphs 32 and 33; and on page 48. Dindinger thanked Chair Wager for catching this error.

Following discussion of the Administrative Law Judge's Preliminary Recommendation, the Board acted as follows: Lee moved to (a) adopt the Recommendation but modified from "2023" to "2022" on page 5 at paragraphs 32 and 33; and on page 48; and (b) grant a hearing. Ruchman seconded the motion. The motion carried on the affirmative vote of the following Board members: Lee, Ruchman, Thomas, and Wager.

B. Ian Cox v. Department of Human Services, SPB 2023S039.

Following discussion of the Administrative Law Judge's Preliminary Recommendation, the Board acted as follows: Ruchman moved to adopt the recommendation, deny a hearing, and refer the matter to the State Personnel Director for review. Thomas seconded the motion. The motion carried on the affirmative vote of the following Board members: Lee, Ruchman, Thomas, and Wager.

**IV. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES FOR POTENTIAL REVIEW UNDER C.R.S. § 24-4-105(14)(a)(II).**

A. Louis Medina v. Department of Corrections, SPB 2023B016.

The Board did not take any action.

**V. REVIEW OF MINUTES FROM THE FEBRUARY 21, 2023, PUBLIC MEETING OF THE STATE PERSONNEL BOARD.**

Lee moved to approve the minutes as submitted. Ruchman seconded the motion. The motion carried on the affirmative vote of the following Board members: Lee, Ruchman, Thomas, and Wager.

**VI. ADMINISTRATIVE MATTERS & COMMENTS.**

A. ADMINISTRATIVE MATTERS.

- Anderson reported that the Colorado Supreme Court denied the Petition for Writ of Certiorari in *Greene v. University of Colorado Boulder* (SPB Case No. 2021B040; Supreme Court Case No. 2022SC784).
- Dindinger reported that the Senate's State, Veterans, & Military Affairs committee held a confirmation hearing for Sarah Wager on March 2, 2023. The committee voted unanimously to recommend Wager's confirmation to the full Senate.

B. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC.

- In advance of the meeting, the Board did not receive any requests to make a general comment publicly.

**VII. RULEMAKING HEARING.**

Starting at approximately 9:24 a.m., the Board conducted a rulemaking hearing regarding proposed changes to Rule 1-2 found at 4 CCR 801-1, Chapter 1-Organization, Responsibilities, Ethics, Payroll Deduction, and Definitions.

Prior to the meeting, the Board received and reviewed written comments as follows: Email from Mark A. Schwane, Esq., dated January 25, 2023, on behalf of Colorado WINS.

Dindinger made a staff presentation regarding the proposed Rule change.

The Board invited any public comment. Nobody made any public comments.

The Board deliberated on the proposed changes to Board Rule 1-2.

Ruchman moved to repeal Board Rule 1-2 in the current version of Chapter 1 and to adopt the following proposed rule and the accompanying statement of basis and purpose as originally published with the Secretary of State on February 10, 2023, with modifications as a result of the Board's deliberations, so that it provides as follows:

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Board Rule 1-2. Certified state employees in the State Personnel System shall be eligible to elect members of the Board in accordance with C.R.S. § 24-50-103 and this Rule.

A. Eligibility to serve as a Board Member.

1. State Personnel Board Members shall be qualified state electors in the State of Colorado.
2. State Personnel Board Members shall not be an officer or employee of the State of Colorado or of any state employee organization.

B. Eligibility to vote for Board Members and to nominate candidates.

1. Certified state employees are eligible to vote for Board Members and to participate in the nomination process.

C. Nomination Process.

1. The Board Director shall initiate the nomination process no later than sixty (60) days prior to the expiration of an elected member's term. The Board Director shall initiate the nomination process no later than thirty (30) days after the date of any other elected member vacancy. Elected member vacancies shall be filled within three months after the date of the vacancy.
2. To initiate the nomination process, the Board Director shall announce the process for nominating candidates and the deadline for candidates to submit nominating signatures.
3. Candidates seeking nomination shall obtain a minimum of fifty (50) nominating signatures from certified state employees by the deadline on the forms provided by the Board Director. Nominating employees shall provide their full name, employee identification number, state email address (if any), Department where they work, and signature.

D. Information from Departments.

1. Departments shall provide the Board with a designated contact person. The designated contact person shall facilitate transmission of the Board's election announcements and shall ensure the Board receives the Department's list of certified state employees.

2. Departments shall provide the Board a list of the Department's certified state employees within thirty (30) days of the Board Director initiating the nomination process. The list shall include the employee's full name, employee identification number, state email address (if any), and the employee's date of certification. The list shall be in a searchable electronic document.

E. Verification of nominating signatures and next steps.

1. The Board Director shall verify the validity of the nominating signatures.
2. If no candidates submit the requisite number of valid signatures, the Board Director shall reinitiate the nomination process.
3. If only one candidate submits the requisite number of valid signatures, the Board Director shall announce that the election is uncontested and the candidate is elected.
4. If more than one candidate submits the requisite number of valid signatures, the Board Director shall proceed to the voting process.

F. Voting Process.

1. To initiate voting, the Board Director shall announce: (a) the names of the candidates; (b) instructions for voting; and (c) the deadline for completing voting.
2. Voting shall be completed in accordance with the Board Director's instructions by the deadline. To ensure eligibility to vote, certified state employees shall provide their full name, employee identification number, state email address (if any), and Department where they work.
3. The Board Director shall count the votes of certified state employees. The candidate with the most votes is elected. Following the count, the Board Director shall announce the election results.

G. Contesting the Election. A certified employee may contest the Board election pursuant to C.R.S. § 24-50-103(3)(c) only after providing:

1. Written notice of the specific grounds for contesting the election. Such notice shall be given to the Board no later than ten (10) days after the Board announces the election results.
2. At least twenty-one (21) days to cure the alleged invalid election.

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Ruchman's motion stated that the specific authority of the State Personnel Board to promulgate this rule 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. Ruchman's motion also stated that the purpose for adopting and revising this rule is: (a) clarification of the Board Rule 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. Ruchman'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 rule; the proper statutory authority exists for the rule; to the extent practicable, the rule is clearly and simply stated; the rule does not conflict with other provisions of law; and any duplication or overlapping was explained. Lee seconded the motion. The motion carried on the affirmative vote of the following Board members: Lee, Ruchman, Thomas, and Wager.

The Board concluded the rulemaking hearing at 9:50 a.m.

### **VIII. EXECUTIVE SESSION.**

At 9:51 a.m., Wager moved to enter an executive session for the following purposes:

- Receive legal advice pursuant to C.R.S. § 24-6-402(3) regarding amended claims. In particular, C.R.S. § 24-50-125.3, Board Rule 8-40, C.R.Civ.P. 15, and *State Pers. Bd. v. Gigax*, 659 P.2d 693 (Colo.1983).
- Receive legal advice pursuant to C.R.S. § 24-6-402(3) regarding a pending matter at the Colorado Supreme Court. Namely, a Petition for Writ of Certiorari filed in *Manning v. DOC* (SPB Case No. 2021B004; Court of Appeals No. 21CA1157).
- Receive legal advice on other matters on the Board's agenda.

Ruchman seconded the motion. The motion carried on the affirmative vote of the following Board members: Lee, Ruchman, Thomas, and Wager. Following a short break, the Board entered into executive session at 10:01 a.m. The executive session ended at 10:46 a.m.

The Board returned to public session. Wager reported that the Board received legal advice on amended claims and on *Manning v. DOC*, but not on any other matters. Thomas reported that the Board was not taking any action with respect to the pending litigation in *Manning v. DOC*, but that the Board reserved the right to take action in the future. Wager reported that the Board did not take any action with respect to amended claims.

The Board meeting adjourned by consensus at 10:50 a.m.

**SIGNED THIS 18th DAY OF APRIL, 2023.**

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Sarah Wager, Chair

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David Ruchman, Vice Chair

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F. Robert Lee, Board Member

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Euell Thomas, Board Member