

State of Colorado



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Governor

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MEETING MINUTES

June 21, 2022

The State Personnel Board met on June 21, 2022. The Board held its meeting via webinar using Zoom. Members of the public attended the meeting via webinar. 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 9:00 a.m. Board Members Patricia Bangert, Kimberley Dempster, Robert Lee, David Ruchman, and Sarah Wager were present for the roll call. Rick Dindinger (Board Director), Ashley Moller, Esq. (First Assistant Attorney General and Board Counsel), and Jenna Anderson, Esq. (Assistant Attorney General), were also present via webinar.

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. MATTER ON REMAND FROM THE COURT OF APPEALS.

- A. Doris McCauley v. Department of Revenue, Division of Motor Vehicles, SPB 2014B061.

Following discussion of the Court of Appeals' Opinion announced on February 24, 2022, and the Court of Appeals' Mandate issued on May 16, 2022, the Board acted as follows: Ruchman moved to remand the case to the Administrative Law Judge for further proceedings consistent with the Opinion of the Court of Appeals. Lee seconded the motion. The motion carried on the affirmative vote of the following Board members: Bangert, Dempster, Lee, Ruchman, and Wager.

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

- A. Leanna Bernabei v. Department of Corrections, Colorado State Penitentiary, SPB 2022B013.

Following discussion of the appeal of the Administrative Law Judge's Initial Decision, including the parties' briefs, the Board acted as follows: Lee moved to affirm the Initial Decision. Dempster seconded the motion. The motion carried on the affirmative vote of the following Board members: Dempster, Lee, Ruchman, and Wager. Bangert voted in opposition.

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

A. Chris Furlong v. Department of Local Affairs, Division of Housing, SPB 2022G051.

Following discussion of the Administrative Law Judge's Preliminary Recommendation, the Board acted as follows: Ruchman moved to adopt the recommendation and deny Complainant's petition for hearing. Dempster seconded the motion. The motion carried on the affirmative vote of the following Board members: Bangert, Dempster, Lee, Ruchman, and Wager.

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

There were no Initial Decisions or Other Final Orders of the ALJ for potential review under C.R.S. § 24-4-105(14)(a)(II).

VI. REVIEW OF MINUTES FROM THE MAY 17, 2022, 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: Bangert, Lee, Ruchman, and Wager. Dempster abstained.

VII. ADMINISTRATIVE MATTERS & COMMENTS.

A. ADMINISTRATIVE MATTERS.

- Dindinger reminded the Board that it will be electing a Chair and a Vice Chair at the July meeting.
- Dindinger reported the Governor appointed Sarah Wager to the State Personnel Board for a second term. Wager's second term begins on July 1, 2022.
- Dindinger recognized outgoing Board Member Patricia Bangert for three years of exemplary service (2019-2022), and for her leadership as the Board's Vice Chair (2021-2022). Each of the Board Members praised Bangert for her service.

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.

VIII. RULEMAKING HEARING.

Starting at approximately 9:45 a.m., the Board conducted a rulemaking hearing regarding proposed changes to Rules found at 4 CCR 801-1, Chapter 1-Organization, Responsibilities, Ethics, Payroll Deduction, and Definitions, Chapter 8-Resolution of Appeals and Disputes, and Chapter 9-Fair Employment Practices.

Prior to the meeting, the Board received and reviewed written comments as follows:

1. Letter from Mark A. Schwane, Esq., dated June 16, 2022, with comments from Colorado WINS.
2. Letter from Katie Gleeson, Esq., dated June 17, 2022, with comments from the University of Colorado and other state agencies.

Dindinger made a staff presentation regarding the proposed Rule changes. Moller also presented information to the Board about the proposed Rule changes.

The Board invited any public comment. The following individual made comments to the Board: Katie Gleeson, Esq., on behalf of the University of Colorado, the State Office of Risk Management, the Department of Labor and Employment, the Department of Local Affairs, the Colorado Community College System, and the Department of Law.

The record closed at the conclusion of the public testimony at 10:09 a.m.

Dempster made a motion to go into executive session. Following a brief discussion, Dempster withdrew the motion. The Board did not go into executive session as part of its rulemaking hearing.

The Board publicly deliberated on the proposed changes to Chapters 1, 8, and 9.

First motion. Wager moved to repeal Board Rules 1-5, 8-7(c), 8-25(A)(2), 8-25(A)(3), 8-35(H), and 9-3 in the current version of Chapters 1, 8, and 9, and to adopt the following proposed rules and the accompanying statements of basis and purpose as originally published with the Secretary of State on May 25, 2022:

- Board Rules 1-5, 8-7(c), 8-25(A)(2), 8-25(A)(3), 8-35(H), and 9-3.

Wager'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. Wager'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. Wager'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. Ruchman seconded the motion. The motion carried on the affirmative vote of the following Board members: Bangert, Dempster, Lee, Ruchman, and Wager.

Second motion. Wager moved to repeal Board Rule 1-19 and to adopt the following proposed rule and the accompanying statement of basis and purpose as originally published with the Secretary of State on May 25, 2022, with modifications as a result of the Board's deliberations, so that it provides as follows:

Board Rule 1-19. An employee may voluntarily and knowingly waive, in writing, all rights under the state personnel system, except where prohibited by state or federal law.

By law, the State Personnel Board has exclusive jurisdiction over claims regarding, but not limited to, the following matters: 1) Disciplinary Actions as defined by Board Rule 6-12; 2) Actions that adversely affect an employee's pay, status, or tenure as identified by C.R.S. § 24-50-125(5); and 3) Claims under the State Employee Protection Act (a/k/a Whistleblower Act) by a classified state employee. Employees who pursue these claims must do so before the State Personnel Board.

In circumstances where an employee or an applicant may waive their rights under the state personnel system, the waiver must: 1) Be made in writing; 2) Be signed by the employee or applicant; 3) Indicate it is knowing and voluntary; 4) Advise employees and applicants of their rights under the Colorado Constitution at Article XII, Section 13 and under the State Personnel System Act, including rights to appeal to the Board; and 5) Notify an employee or applicant that they may obtain information regarding the State Personnel Board on the Board's website (spb.colorado.gov).

Wager'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. Wager'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. Wager'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. Dempster seconded the motion. The motion carried on the affirmative vote of the following Board members: Dempster, Lee, and Wager. Bangert and Ruchman voted in opposition.

The Board concluded the rulemaking hearing at 11:30 a.m.

IX. EXECUTIVE SESSION.

At 11:32 a.m., Ruchman moved to enter an executive session for the following purpose:

- For the purpose of receiving legal advice pursuant to C.R.S. § 24-6-402(3) regarding C.R.S. § 24-50-1110. In particular, C.R.S. § 24-50-1110's applicability to the Partnership Agreement (a/k/a Collective Bargaining Agreement) between the State of Colorado and Colorado Workers for Innovative and New Solutions (a/k/a Colorado WINS).

Dempster seconded the motion. The motion carried on the affirmative vote of the following Board members: Bangert, Dempster, Lee, Ruchman, and Wager. Following the vote, the Board entered into executive session. The executive session ended at 11:59 a.m.

Following the executive session, Wager announced that the Board had received legal advice and not taken any action.

The Board meeting adjourned by consensus at 12:01 p.m.

SIGNED THIS 19th DAY OF JULY, 2022.

Sarah Wager, Chair

Kimberley Dempster, Board Member

F. Robert Lee, Board Member

David Ruchman, Board Member