DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor Standards and Statistics

COUNTY COLLECTIVE BARGAINING (COBCA) RULES

7 CCR 1103-16

As ~~proposed March 15, 2023; if a~~dopted May 11, 2023;~~,~~ ~~to be~~ effective July 1, 2023.

Rule 1. Statement of Purpose and Authority

1.1 The general purpose of these County Collective Bargaining Rules is to exercise the authority of the Director, through the Division, to administer and enforce the provisions of the Collective Bargaining by County Employees Act ("COBCA"), Colorado Revised Statutes (C.R.S.) Title 8, Article 3.3 (2023), C.R.S. § 8-3.3-101 et seq. These rules are intended to be consistent with the rulemaking requirements of the State Administrative Procedure Act, C.R.S. § 24-4-103.

1.2 The Director of the Division of Labor Standards and Statistics in the Department of Labor and Employment has authority to enforce, interpret, apply, and administer the provisions of C.R.S. Title 8, Article 3.3 and these rules.

1.3 Incorporations by Reference. The Collective Bargaining by County Employees Act, C.R.S. § 8-3.3-101 et seq., is hereby incorporated by reference into these rules. Such incorporation excludes later amendments to or editions of the statutes. These statutes are available for public inspection at the Colorado Department of Labor and Employment, Division of Labor Standards & Statistics, 633 17th Street, Denver CO 80202. Copies may be obtained from the Division of Labor Standards & Statistics at a reasonable charge. Electronic access is available from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of the statutes incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing the statutes. All Division rules are available to the public at www.coloradolaborlaw.gov. Where these rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these rules govern so long as they are consistent with Colorado statutory and constitutional provisions. Where these rules reference another rule, the reference shall be deemed to include all subparts of the referenced rule.

1.4 Separability. These rules are intended to remain in effect to the maximum extent possible. If any part (including any section, sentence, clause, phrase, word, or number) is held invalid, (A) the remainder of the Rule remains valid, and (B) if the provision is held not wholly invalid, but merely in need of narrowing, the provision should be retained in narrowed form.

Rule 2. Definitions

2.1 "Authorized representative" means a person designated by a party to any labor-management dispute, unfair labor practice complaint, election petition, or other Division administrative proceeding to represent the party. A party may designate an authorized representative by filing the Division-approved form or by a signed written notice to the Division that the authorized representative will represent the party. Authority of the authorized representative may be revoked by the designating party upon written notice to the Division.

2.2 "Bargaining unit" means a group of county employees in a unit deemed appropriate for the purpose of collective bargaining in accordance with C.R.S. § 8-3.3-110, except that a bargaining unit does not include a confidential employee as defined by C.R.S. § 8-3.3-102(5); an executive employee as defined by C.R.S. § 8-3.3-102(14); a managerial employee as defined by C.R.S. §

8-3.3-102(18); or temporary, intermittent, or seasonal employees who work less than 90 days in a 365-day period.

2.3 "COBCA" means the Collective Bargaining by County Employees Act as contained in Title 8, Article 3.3 of the Colorado Revised Statutes, enacted on May 27, 2022.

2.4 "Collective bargaining" or "collectively bargain" has the meaning as defined by C.R.S. § 8-3.3-102(2).

2.5 "Collective Bargaining Agreement" ("CBA") has the meaning as defined by C.R.S. § 8-3.3-102(3).

2.6 "County" has the meaning as defined in C.R.S. § 8-3.3-102(6) and includes a county in the state of Colorado, but does not include: (1) Aa city and county; (2) Aa county with a population of less than 7,500 people pursuant to the official figures of~~, as officially recorded in~~ the most recent United States decennial census; (3) The~~any~~ state or any political subdivision of the state where the state or political subdivision of the state acquir~~ies~~ng or operat~~es~~ing a mass transportation system, or any carrier by railroad, express company, or sleeping car company~~entity~~ subject to the Railway Labor Act, 45 U.S.C. § 151 et seq., as amended; (4) Aa municipality; (5) Aa school district, a district charter school pursuant to Part 1, Article 30.5, Title 22, or an institute charter school pursuant to Part 5, Article 30.5,Title 22; (6) Aany district, business improvement district, special district created pursuant to Title 32, authority, or other political subdivision of the state; or (7) Aa public hospital established by a county pursuant to Part 3, Article 3, Title 25.

2.7 "County employee" has the meaning as defined by C.R.S. § 8-3.3-102(7): "a person employed by a county, including a person whose employment with the county has ceased due to an unfair labor practice or a discharge, if such discharge is subject to appeal under an applicable appeals process."

2.8 "Director" means the Director of the Division of Labor Standards and Statistics, and includes a designee or agent selected by the Director to perform any delegable functions of the Director pursuant to authority granted by any applicable provision of law, including but not limited to C.R.S. § 8-1-103(1).

2.9 "Division" means the Division of Labor Standards and Statistics in the Colorado Department of Labor and Employment.

2.10 "Employee organization" has the meaning as defined in C.R.S. § 8-3.3-102(12), ~~and~~ includes any organization of persons or entities that is not operated or organized for profit, and is synonymous with "labor organization."

2.11 "Exclusive representative" means the employee organization certified or recognized as the representative of employees in a bargaining unit under COBCA.

2.12 "Mail" refers to first-class mail sent through the United States Postal Service, postage prepaid.

2.13 "Order" means any decision, rule, regulation, requirement, or standard promulgated by the Director, as defined by C.R.S. § 8-1-101(11).

2.1~~3~~4 "Organizations," for purposes of regulating deductions under C.R.S. § 8-3.3-104(4), include only the exclusive representative and related entities. Charitable organizations unaffiliated with the exclusive representative are not regulated by C.R.S. § 8-3.3-104(4).

2.1~~4~~5 "Person" refers to one or more individuals, an employee, an employee organization, partnerships, associations, corporations, legal representatives, trustees, or receivers.

2.1~~5~~6 "Post" means to display in conspicuous places frequented by employees on the employer's premises, at places customarily used for posting of employee notices, and where such notice may be easily read during the workday, such as in break rooms, on employee bulletin boards,

and/or adjacent to time clocks, department entrances, and/or facility entrances, and on any electronic bulletin boards or other means of electronic notice used by the employer.

2.17~~6~~ "Showing of interest" means written or electronic documentation that provides evidence of county employee membership or support for an employee organization for purposes of exclusive representation. For a "showing of interest," county employees may submit an ink signature, a scanned signature, an electronically drawn or generated signature, or their typed name personally entered in the designated signature area. Any electronic signature acceptable under the "Uniform Electronic Transactions Act," Article 71.3 of Title 24, is sufficient for a "showing of interest."

2.18~~7~~ "Unfair labor practices" are defined in C.R.S. § 8-3.3-115(1)-(6).

Rule 3. Filing, Service, and Deadlines

3.1 Documents shall be filed electronically, on a Division-approved form if one is available, pursuant to these rules and any orders, instructions, and deadlines provided or published by the Division. If the Division does not publish~~have~~ an applicable form ~~posted~~ or provide one to a party when the party intends to file, or if a party cannot readily use such means for filing, the party may file documents by any other means that provide the filing to the Division, including but not limited to email, other electronic means, or mailing or hand-delivering paper copies. A document is considered "filed" when received by the Division; any document received after 11:59 p.m. Mountain Time is considered "filed" the next business day.

3.1.1 Any submission is considered "signed" or to have a "signature" if it has either an ink, scanned, or electronically drawn or generated signature, or a typed name entered by the party or their authorized representative in the signature area. By signing in any such manner, the individual is deemed to have agreed and assented that the document is signed by them.

3.1.2 Handwritten signatures verifying identification and voter eligibility are required on envelopes in mail ballot elections. Typed or electronically drawn or generated signatures will not be accepted.

3.2 Except as otherwise provided by these rules, or by the Director, whenever service of a document is required, service is made to a person or party by hand-delivery, mail, or transmission by facsimile, or other electronic means. The email address or facsimile number on file with the Division or furnished by the person or party shall be used for service. The current address on file with the Division or the last known address of the person or party shall be used for mailing.

3.3 The calculation of any period of time prescribed or allowed by these rules shall be done in accordance with C.R.S. § 2-4-108.

3.4 Deadlines and schedules under these rules shall generally be set considering the goals of COBCA, including, but not limited to: effective enforcement of all rights and responsibilities provided by COBCA; providing all parties notice and opportunity to be heard; and conducting elections as soon as practicable. Deadlines may be extended for "good cause" if the request is made three days before the deadline, absent emergencies or exigent circumstances. In considering whether good cause exists under these rules or applicable statutes for extensions of deadlines, the Director will determine whether the reason is substantial and reasonable, based on all the available information and circumstances pertaining to the matter.

Rule 4. Certification or Decertification of Exclusive Representative

4.1 Certification of Exclusive Representative.

4.1.1 Petitions for the selection of an exclusive representative for a proposed bargaining unit shall be filed with the Division using the approved form(s) and in compliance with any instructions specified by the Division.

4.1.2 Petitions for the selection of an exclusive representative shall contain a showing of interest of at least 30% of the county employees in the proposed bargaining unit.

4.1.3 Petitions may be filed by an employee organization seeking exclusive recognition, or by a single employee, a group of employees, or the representative of either of them.

4.1.4 Upon receipt of a petition for selection of an exclusive representative, the Director shall issue a notice identifying the petitioner and the proposed bargaining unit, explaining the election process, and advising county employees of their rights under C.R.S. § 8-3.3-103(1)-(3). The county shall distribute the notice to the county employees in the proposed bargaining unit and shall post the notice in the manner described in Rule 2.1~~5~~6.

4.1.5 An employee organization voluntarily recognized by a county prior to July 1, 2023, may obtain certification from the Division using forms approved by the Division, if any, and in accordance with C.R.S. § 8-3.3-108(2)(a)-(c). An employee organization that does not obtain such a certification shall nevertheless continue as the voluntarily recognized exclusive representative for the duration of a CBA in effect as of July 1, 2023.

4.2 Intervention.

4.2.1 Within 10 days after the date the notice in Rule 4.1.4 is first distributed, other employee organizations may seek to intervene in the certification process by filing a petition for intervention with the Division using the approved form(s) and in compliance with any instructions specified by the Division.

4.2.2 Petitions for intervention shall contain a showing of interest of at least 30% of the county employees in the proposed bargaining unit. Disputes regarding the composition of the bargaining unit will be resolved in accordance with Rule 4.4.

4.3 Decertification of Exclusive Representative.

4.3.1 A county employee or an employee organization may initiate decertification of the exclusive representative.

4.3.2 A petition for decertification shall be filed with the Division using the approved form(s) and in compliance with any instructions specified by the Division.

4.3.3 The decertification petition shall contain a showing of interest demonstrating that at least 30% of the county employees in the appropriate bargaining unit either:

(A) request decertification of the existing exclusive representative, or

(B) authorize an employee organization other than the exclusive representative to represent them for purposes of collective bargaining.

4.3.4 If a collective bargaining agreement is in effect, the petition for decertification may be filed no earlier than 90 days and no later than 60 days prior to the expiration of the collective bargaining agreement; except that a petition for decertification may be filed any time after the third year of a collective bargaining agreement that has a term of more than three years.

4.3.5 If a collective bargaining agreement is not in effect, no action shall be taken on a petition for decertification earlier than 12 months after the certification of an employee organization as the exclusive representative.

4.4 Appropriate Bargaining Unit Determination~~isputes~~.

4.4.1 Objections to bargaining unit composition shall be raised by a party or intervenor within 10 days after the county posts the notice of the petition as required in Rule 4.1.4, by submitting a position statement that shall include any relevant arguments and supporting evidence.

4.4.2 In any dispute regarding the determination of the appropriate bargaining unit based on the factors listed in C.R.S. § 8-3.3-110, the parties may address, among other considerations, (A) the community of interest and right to effective representation of the petitioned-for employees, (B) the efficiency of county operations, and/or (C) the promotion of harmonious, peaceful, and cooperative employment relations.

4.4.3~~2~~ ~~In the event of an intervenor-initiated dispute regarding the positions to be included in the appropriate bargaining unit pursuant to C.R.S. § 8-3.3-109(3),~~ After receiving a position statement objecting under Rule 4.4.1, the Director may: invite or order other parties to submit responses; order an investigation, and/or the exchange of discovery~~;~~, order parties to appear at any hearing(s); and/or ~~the~~ issu~~e~~ance ~~of preliminary~~ findings of fact or law prior to holding a hearing to determine the appropriate bargaining unit.

4.4.4~~3~~ In the event of a hearing to determine the appropriate bargaining unit, the Director will accept evidence on the factors listed in C.R.S. § 8-3.3-110, and Rule 4.4.2~~1~~, and issue a written ~~decision including findings of facts under those factors and a final~~ determination of the appropriate bargaining unit, including findings of fact, conclusions of law, and an order.

4.4.5~~4~~ The Director may determine a unit to be an appropriate unit in a particular case, even though some other unit might also be appropriate.

4.4.6~~5~~ The Director's decision regarding an appropriate bargaining unit is an administrative determination rather than a final agency action, and therefore is not subject to appeal until final certification of an election~~for the purpose of collective bargaining is final and conclusive and not appealable to court~~.

4.5 Showing of Interest Determination.

4.5.1 After composition of the bargaining unit has been deemed appropriate, either by consent of the parties or by decision of the Director, the sufficiency of the showing of interest of each petitioner shall be determined without disclosing the identity of any county employee who participated in the showing of interest.

4.5.2 In determining the sufficiency of the showing of interest, the Director may request a list of the employees in the bargaining unit from the county employer for comparison.

4.5.3 If any petition lacks sufficient showing of interest, the Director, in accordance with C.R.S. § 8-3.3-109(3), shall permit a 10-day opportunity for the petitioner to demonstrate a sufficient showing of interest in the bargaining unit.

4.5.4 The sufficiency of the showing of interest in a representation election for exclusive representation is an administrative determination made by the Director ~~or the Director's designee~~ and is not subject to challenge by any person.

4.6 Representation Elections (Certification or Decertification).

4.6.1 Within 10 days after the Director's determination that a sufficient showing of interest has been provided, the Director shall:

(A) Order the county to provide to the petitioning employee organization(s) and the Division, by three business days before the pre-election conference, unless the Director orders an earlier date, a list of employees as required by C.R.S. § 8-3.3-109(4)(a) and the Labor Peace and Industrial Relations ("LPIR") Rules, 7 CCR 1101-1, Rules 5.3.2(C) and 5.3.3, and consistent with the requirements of those statutory and rule provisions, unless the Director orders different procedures based on the circumstances~~the contact information of the county employees in the appropriate bargaining unit, in accordance with C.R.S. § 8-3.3-109(4)(a)~~;

(B) Establish procedures for a secret ballot election, conducted in-person, by mail, and/or other means the Director determines to be appropriate, either by consent or by order, after soliciting input from the parties at a pre-election conference or otherwise; and

(C) Order the county to distribute the election notice to all county employees in the appropriate bargaining unit and to post the election notice in the manner described in Rule 2.16~~5~~.

4.6.2 Notices and ballots for any election shall be in English and Spanish if any party or eligible voter credibly indicates, at or before the pre-election conference, that any voters need Spanish-language ballots. Any party or eligible voter may request ballots in any other language, and the Director shall endeavor to so provide if possible in the time provided.

4.6.3 The ballot for the secret ballot election shall~~must~~ contain:

(A) The name of any employee organization submitting a petition with a sufficient showing of interest as determined by the Director in accordance with Rule 4.5; and

(B) A choice of "no representation" for county employees to indicate they do not desire to be represented by an employee organization.

4.6.4 Representation elections shall follow the procedures of LPIR Rules 5.3.2(C)–5.3.3, 5.5.3–5.5.5, and 5.6.2–5.8.3, unless the Director orders different procedures based on the circumstances.~~Electioneering shall not be permitted within 50 feet of the polling place.~~

4.6.5 ~~The Director shall certify the results of the secret ballot election, and if an employee organization receives a majority of the ballots cast, the Director shall certify the employee organization as the exclusive representative of all county employees in the appropriate bargaining unit subject to any valid objections to the conduct of the election filed in accordance with C.R.S. § 8-3.3-109(7) and these rules.~~The Director shall notify, or cause notice to be provided to, all parties and all covered employees of the certified results of the secret ballot election.

4.6.6~~7~~ In order to prevail in an election, a choice on the ballot must receive a majority of the valid ballots cast, except:

(A) In a certification~~representation~~ election in which only the petitioning employee organization and "no representation" appear on the ballot, "no representation" prevails in the event of a tie vote.

(B) In a decertification election in which only the incumbent employee organization and "no representation" appear on the ballot, the incumbent employee organization prevails in the event of a tie vote.

4.6.7~~8~~ Within 28 days after a secret ballot election with multiple employee organizations on the ballot, a runoff election shall be held if there is no majority of ballots cast for any employee organization and the "no representation" choice did not achieve a majority.

(A) A runoff election shall be between the two employee organizations that received the most ballots cast in the initial representation election. "No representation" will not be a choice in the runoff election.

(B) A runoff election shall be held no later than 28 days after the initial representation election and shall be conducted as a second balloting limited to the two runoff options.

(C) Only if an employee organization receives a majority of the ballots cast in the runoff election will the Director certify the employee organization as the exclusive representative of all county employees in the appropriate bargaining unit. In the event of a tie, neither employee organization has achieved a majority and neither employee organization will be certified as the exclusive representative.

4.6.8~~9~~ Within seven days after certification of the results of an election, any party may file objections to the conduct of the election or to conduct affecting the results of the election. Absent timely objections, the certification shall constitute final agency action subject to judicial review pursuant to C.R.S. § 24-4-106.

(A) The objections must contain a short statement of the reasons for the objections and be accompanied by a written offer of proof identifying:

(i) each witness the party would call to testify concerning the issue; and

(ii) a summary of each witness's testimony.

(B) Upon a showing of good cause, the Director may extend the time for filing the offer(s) of proof. Objections without supporting evidence may be dismissed.

(C) The party filing objections shall serve a copy of the objections, but not the offer(s) of proof, on the other parties. The objecting party shall file a signed statement with the Division affirming that the objections have been served on the other parties and stating the date and method of service. The other parties shall have 10 days from the date of service to respond to any objection. Responses shall be served on all other parties~~the objecting party~~ and filed with the Division. The Division filing must be accompanied by the same offer of proof required by subsection (A) of this rule.

(D) The Division will only investigate challenged ballots if the challenged ballots are sufficient in number to affect an election's outcome.

(E) If the Director or a designated hearing officer finds that misconduct affected the outcome of the election, the Director shall invalidate the election and order a subsequent election for the county employees in the appropriate bargaining unit within 28 days after the finding. This order is an administrative determination, rather than a final agency action, and therefore is not subject to appeal until after final certification of the subsequent election.

Rule 5. Unfair Labor Practices

5.1 Unfair Labor Practice Complaints.

5.1.1 Unfair labor practice complaints shall be filed on the designated form provided by the Division, and shall comply with any other Division instructions as to the information and/or documentation required by the Division.

(A) The aggrieved party filing an unfair labor practice complaint shall be designated the charging party. The party against whom a complaint is filed shall be designated the respondent(s).

(B) Either party may designate an authorized representative to act on their behalf in the Division's complaint and/or appeal process in accordance with Rule 2.1.

(C) An unfair labor practice complaint (or charge) must be received by the Division within six months after the date on which the charging party knew or reasonably should have known of the alleged unfair labor practice.

(D) The charging party shall set forth a clear and concise statement of the facts constituting the unfair labor practice and the statutes allegedly violated.

(E) Failure to respond in a timely manner to requests from the Division for additional supporting information and/or documentation may result in dismissal of the unfair labor practice complaint.

5.1.2 The Division will evaluate unfair labor practice complaints to determine if the Division has jurisdiction over the alleged conduct and if sufficient allegations and evidence has been shown from which an unfair labor practice may be reasonably inferred.

5.1.3 If the unfair labor practice complaint provides insufficient evidence, the Division will notify the charging party and may request additional information and/or documentation.

5.1.4 A charging party may withdraw an unfair labor practice complaint at any time prior to issuance of a determination.

5.2 Notice of Unfair Labor Practice Complaint to Respondent(s).

5.2.1 After determining that a charging party's unfair labor practice complaint contains sufficient allegations and evidence that, if proven true, would state a claim of an unfair labor practice, the Division shall give notice of the allegations and request an answer be filed by each respondent.

5.2.2 The respondent shall file an answer responding to each allegation in the complaint, and attach any documentation or evidence the respondent wishes the Division to consider in reviewing the complaint, within 21 ~~calendar~~ days of the date the Division sends a copy of the complaint to the respondent. The Division may exercise discretion to shorten the response deadline.

5.2.3 Upon receiving a request in writing to the Division stating the reason an extension is required, the Division may, at its discretion, extend the period for the respondent to file an answer to the complaint for good cause in accordance with Rule 3.4.

5.2.4 Upon written request, at the Division's discretion, other parties or entities may be designated as intervenors or may be joined as charging parties or respondents.

5.3 Investigation and Determination of Unfair Labor Practice Complaints.

5.3.1 Upon receipt of the unfair labor practice complaint, the answer, and any supplemental information or documentation, the Division shall determine whether additional investigation is required. In the event further investigation is required, investigatory methods used by the Division may include, but are not limited to:

(A) Interviews of the employer, employee(s), and other parties;

(B) Information gathering, fact-finding, and reviews of written submissions; and

(C) Any other lawful techniques that enable the Division to assess whether an unfair labor practice occurred.

5.3.2 During the investigation, if information is provided to the Division by a source requesting confidentiality, and that information is used only as a basis for procuring other evidence, but not offered as evidence itself, then the source shall remain confidential.

5.3.3 The Division may exercise its discretion to have an investigation sequenced and/or divided into two or more stages on discrete questions of liability or relief (*e.g.*, bifurcation), yielding two or more determinations and/or phases of the investigation.

5.3.4 Where a complaint or investigation for violation of these rules or the statutes they enforce has been filed or commenced, all parties shall preserve all relevant documents until final disposition and until the expiration of the statutory period within which a person aggrieved may bring a civil action.

5.3.5 The burden of proof for establishing an unfair labor practice is on the charging party, who must establish by a preponderance of the evidence that an unfair labor practice has been committed.

5.3.6 The Division shall make a determination as to whether an unfair labor practice has been committed and issue written findings and orders, which shall be sent to all parties. Absent a timely administrative appeal, the determination shall constitute final agency action, and the final decision of the Director, subject to judicial review pursuant to C.R.S. § 24-4-106.

5.3.7 Determinations by the Division may include the following remedies, as the findings of the determination warrant, and pursuant to the Division's investigative and enforcement authority as authorized by COBCA and/or other statutes:

(A) appropriate administrative remedies;

(B) actual damages related to employee organization dues;

(C) back pay, including benefits;

(D) reinstatement of the county employee with the same seniority status the employee would have had but for the unfair labor practice violation;

(E) other remedies to address any loss suffered by a county employee or a group of county employees from unlawful conduct by a county;

(F) declarative or injunctive relief or provisional remedies, including temporary restraining orders or preliminary injunctions**;** and

(G) any other remedies or relief authorized by law, including but not limited to C.R.S. Title 8, Articles 1, 4, 6, and 13.5.

5.4 Unfair Labor Practice Appeals.

5.4.1 Either the charging party or respondent may file an administrative appeal within 35 days from the date of the Division's determination. A valid appeal is a written statement explaining the basis for the appeal that is timely filed with the Division, is not frivolous, and has been signed by the appellant or the appellant's authorized representative. An appeal is frivolous if it fails to allege an error that could result in the reversal or modification of the determination or otherwise is manifestly insufficient or futile. The Division's initial determination remains operative during the appeal, unless an appeal filing requests, and then is granted, any stay.

5.4.2 On appeal, findings of fact are reviewable for clear error, while findings of law are reviewable de novo.

5.4.3 Upon receipt of the appeal, the Division will notify the parties of the date of the hearing and any interim deadlines, and send a copy of the appeal and a copy of the record of its investigation to the parties by mail or email. All evidence submitted to the Division during the investigation is part of the record on appeal and need not be resubmitted.

5.4.4 The hearing officer (including an Administrative Law Judge) shall have the power and authority to call, preside at, and conduct hearings on the appeal, including the power to administer oaths and affirmations, order and take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed determination. The hearing officer shall make a decision on each relevant issue raised, including findings of fact, conclusions of law, and an order.

5.4.5 Parties who timely file a valid appeal of the Division's determination will be afforded an administrative appeal hearing before a Division hearing officer. Parties may be required to appear by telephone or other remote means.

5.4.6 The parties may submit new testimonial evidence, which is defined as any evidence that is elicited through the statements of individual witnesses, to the hearing officer in accordance with deadlines imposed by the Division. New evidence must be sent to all other parties to the appeal. Failure to send all new evidence to all other parties to the appeal may result in the evidence being excluded from the record. The parties may submit new documentary or other non-testimonial evidence in accordance with deadlines imposed by the Division and upon showing "good cause," which may be assessed based on any relevant factors, including but not limited to:

(A) That the new evidence was previously not known or obtainable, despite diligent evidence gathering efforts by the party offering the new evidence;

(B) That the party failed to receive fair notice of the investigation or of a key filing by another party or by the Division to which the new evidence is responsive;

(C) That factors outside the control of the party prevented a timely action or interfered with the opportunity to act, except that the acts and omissions of a party's authorized representative are considered the acts and omissions of the party and are not considered to be a factor outside the party's control as intended by this rule;

(D) That a determination raised a new issue or argument that cannot be responded to adequately without the new evidence;

(E) That, at the investigation stage, the party offering new evidence requested more time to submit evidence, yet was denied, and in the hearing officer's judgment

(1) the need for more time was legitimate and did not reflect neglect by the party, (2) the denial of the request for more time was unwarranted, and (3) exclusion of the evidence would cause substantial injustice to the party; and/or

(F) That failure to admit the new evidence otherwise would cause substantial injustice and did not arise from neglect by the party.

5.4.7 An appeal may, at the discretion of the hearing officer, be sequenced and/or divided into two or more stages on discrete questions of liability or relief (*e.g.*, bifurcation), yielding two or more decisions and/or phases of the appeal.

Rule 6. Judicial Review

6.1 The certification of an election or the determination of a ULP complaint~~Unless otherwise stated, a decision~~ by the Director, a hearing officer, or an Administrative Law Judge ("ALJ") constitutes a final agency action subject to judicial review pursuant to C.R.S. § 24-4-106. The Division shall promptly provide all parties with a copy of the decision of the Director, hearing officer, or ALJ by mail or email. ~~A party may seek judicial review of the decision pursuant to C.R.S. § 24-50-1115(1).~~