



**DEPARTMENT OF LABOR AND EMPLOYMENT  
DIVISION OF LABOR STANDARDS AND STATISTICS  
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COBCA & Labor Relations Rules Public Hearing

Date of Hearing: April 18, 2023

Appearances: Scott Moss, Division of Labor Standards &  
Statistics Director

Michael Primo, Director of Operations &  
Rulemaking Coordinator

Kristina Rosett, Managing Policy Advisor

Joann Long, Program Manager for Labor  
Relations and PESS

Dean Conder, Compliance Investigator and  
Senior Advisor for Labor Relations

Emilyn Winkelmeier, Policy Advisor

Raja Rangunath, Administrative Law Judge

Elizabeth Funk, Labor Standards Director

Recorded digitally and transcribed by  
Ditto Transcripts.

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P R O C E E D I N G S

THE HEARING OFFICER: Okay. The recording has begun. Director Moss, you may begin the hearing.

MR. SCOTT MOSS: All right. Thank you for coming. Good afternoon. I'm Scott Moss, Director of the Division of Labor Standards & Statistics in the Colorado Department of Labor and Employment. Time is 3:01 p.m. on Tuesday, April 18th, 2023. This is a public rulemaking hearing held by this Division with participants listening and speaking on the internet and/or by phone. A recording of this hearing will be added to the administrative record for this ruling process.

Thank you all for joining us. With me in this hearing from the Division are Mike Primo, the Division's Director of Operations and Rulemaking Coordinator, Kristina Rosett, Managing Policy Advisor, Joann Long, Program Manager for Labor Relations and PESS, Dean Conder, Compliance Investigator and Senior Advisor for Labor Relations, Emilyn Winkelmeyer, Policy Advisor, Raja Rangunath, Administrative Law Judge, and Elizabeth Funk, Labor Standards Director.

Today we'll accept testimony for the two proposed sets of rules of March 15th, 2023. First, the Labor Peace and Industrial Relations Rules, the LPIR Rules, 7 CCR 1101-1. The purpose of these rules is to amend what was

1 formally known as the Rules of Procedure to the Colorado  
2 Labor Peace Act and Industrial Relations Act and what is  
3 now the Labor Peace and Industrial Relations Rules to  
4 simplify the title for ease of reference.

5           The next set of rules is the County Collective  
6 Bargaining Rules or the COBCA Rules for the Collective  
7 Bargaining for Counties Act, 7 CCR 1103-16. This is a new  
8 ruleset implementing the requirements of the Collective  
9 Bargaining by County Employees Act, COBCA, enacted May  
10 27th, 2022, and effective January 1st, 2023, but with the  
11 substantive revisions taking effect with July 1st, 2023.  
12 This was the law enacted last legislative session as SB22-  
13 230. COBCA requires us to engage in rulemaking to create a  
14 regulatory framework for labor relations and collective  
15 bargaining and company matters for counties and county  
16 employees in Colorado.

17           Anyone may speak on any one or more of these  
18 rules or rulesets in any order. We will not be taking  
19 testimony on other labor law and policy topics that are not  
20 part of these particular proposed rules.

21           For all rules from this Division, the Notice of  
22 Public Hearing and the associated rulemaking documents were  
23 filed with the Secretary of State for publication on their  
24 website and in the state register as provided by the  
25 Colorado Administrative Procedure Act. The Division then

1 posted all rulemaking documents on our website and  
2 publicized them to our contact list of several hundred  
3 stakeholders though in reality to thousands of stakeholders  
4 because our stakeholder list is a mix of individuals and  
5 organizations whose members have expressed interest in  
6 Division rules or are known to the Division to be  
7 interested in such rules.

8           For more information on any of these proposed  
9 rules from this Division, visit the Division's rulemaking  
10 page [cdle.colorado.gov/laborrules](http://cdle.colorado.gov/laborrules). That's one word, labor  
11 rules. Again, [cdle.colorado.gov/laborrules](http://cdle.colorado.gov/laborrules).

12           Before we begin, a few rules and guidelines for  
13 the record. In this hearing the Division is accepting oral  
14 testimony as well as written comments through the chat  
15 window available to anyone joining by internet. The same  
16 administrative record will include all verbal testimony,  
17 all comments in the chat window and all written comments  
18 submitted outside before or after this hearing.

19           All testimony and comments are reviewed by myself  
20 and the same Division officials, so while you're free to  
21 comment or testify by any means you prefer, there's no need  
22 to repeat points in multiple forms of testimony and comment  
23 submission.

24           Written comments may be submitted in various  
25 ways. You can email them to Michael Primo. You can submit

1 them through the form on our website, again  
2 [cdle.colorado.gov/laborrules](https://cdle.colorado.gov/laborrules), or if they're short, you can  
3 just type them in the chat window in this Google Meet where  
4 they will be saved the same as other comments. The written  
5 comment deadline for these rules is Friday, April 28th,  
6 2023, 10 days from now, at 12:00 p.m. Noon Mountain time.

7           This hearing is for comments related to these  
8 proposed rules. If instead you have individualized  
9 questions you'd like answers to, we'd be happy to respond  
10 outside this hearing. Email questions to Mike Primo at  
11 [Michael.primo@state.co.us](mailto:Michael.primo@state.co.us). That's a email address you'll  
12 see on your screen and in the chat window so that he can  
13 route to the right person to give you an individualized  
14 answer.

15           We do anticipate that the time available for  
16 today's hearing will be enough to hear all testimony on all  
17 proposed rules. Normally public rulemaking hearings have a  
18 start time and whenever it's done, testimony is done or the  
19 close of business. We are attempting to accommodate  
20 everyone who wishes to speak, so we will be here until  
21 everyone has been given the opportunity to speak, whether  
22 that takes half hour, one hour, two hours or longer.

23           Second, on the off chance that more time is  
24 needed or if we have technical difficulties, this hearing  
25 may be continued to another date which we'll announce at

1 the end of today's hearing with the details posted on our  
2 webpage by 12:00 p.m. tomorrow.

3 Thank you again for taking the time to attend  
4 this public hearing and to participate in our rulemaking  
5 process. We'll now receive oral testimony. We'll start  
6 with those who signed up to testify in advance starting  
7 with those who are here by computer, then here by phone.  
8 Then we'll invite testimony from those who did not sign up  
9 in advance starting with those here by computer, then those  
10 here by phone.

11 Before we begin, a few instructions for  
12 participants. First, please keep your computer or phone on  
13 mute. If you're testifying, still keep your phone on mute  
14 until we are calling your name. For those speaking, when  
15 we call on you please do the following. First, please  
16 unmute yourself. Then when we remind you that you forgot  
17 to unmute yourself, please unmute yourself.

18 Second, please state your full name, job and role  
19 and whether you're speaking for any organization. If you  
20 wish to remain anonymous however, that is your right under  
21 Wage Protection Rule 4.7. You can instead just say your  
22 first name or a pseudonym, a fake name or describe as much  
23 as you are comfortable as to your role or the experience  
24 you're here to testify about. And you can go off video as  
25 part of remaining anonymous if you wish.

1           Third, when you start speaking, say which rule or  
2 ruleset you'll discuss. If you're speaking about a  
3 particular proposed rule, speak to that number if possible.  
4 Again, you can speak to any matter you want related to the  
5 rules. So if you don't have a specific rule or rule number  
6 in mind, you can just speak generally.

7           Fourth, remember testimony is limited to five  
8 minutes per speaker. Some of you may have more input on  
9 these rules than five minutes of speaking can cover.  
10 That's why we're soliciting written comments for the past  
11 few months, including long before the rulemaking was  
12 formally proposed, and comments will continue until again  
13 12:00 p.m. Friday, April 28th, a week from this coming  
14 Friday. So if you have more to say than you can cover in  
15 five minutes of speaking, you can submit the rest as a  
16 comment by emailing it or submitting it through our Google  
17 form on our webpage.

18           Fifth, please speak in a clear, slow voice. We  
19 may interrupt to ask you to repeat anything we think may  
20 not have been heard or if the audio was garbled or that we  
21 think otherwise might not be audible or bear repeating.  
22 After you finish speaking, we may ask follow-up questions.  
23 When you finish please mute yourself again.

24           If you'd like to give your name and information  
25 for the record, whether you testify or not, or if you're

1 not on a Division's stakeholder list to receive notices of  
2 proposed rules or of other Division publications and you'd  
3 like to be added to our list, you can email Michael Primo  
4 again at Michael.primo@state.co.us after the hearing or  
5 fill out any of our RSVP forms on the rules page or enter  
6 your information in the comment window. And again, I'll  
7 just reiterate, our rules page with all these information  
8 and links are [cdle.colorado.gov/laborrules](http://cdle.colorado.gov/laborrules).

9 Thank you for your interest in and your  
10 participation in these important matters of Colorado labor  
11 law and policy.

12 Mike, are there further instructions to read  
13 beyond what I've covered?

14 MR. MICHAEL PRIMO: No. I posted the  
15 instructions, Director Moss, on the -- as a presenter so  
16 all individuals can read along with it. I would just  
17 reiterate that if you are planning to speak and you're here  
18 by computer, you would hit control D to unmute yourself.  
19 If you're by phone, you would hit star six on your phone.

20 Preferably since it's a larger forum, if you  
21 would like to speak, if you could throw your name in the  
22 chat window and I'll call on you in the order in which they  
23 are presented in the chat window. If we don't have anybody  
24 in the chat window wanting to speak, I'll open the floor up  
25 for individuals to just either raise their hand to speak or



1 simply unmuting themselves. Once we've gone through  
2 everybody here virtually, we will then open it up for  
3 anybody here calling in to unmute themselves and speak.

4           So with that in mind, if anybody would like to  
5 throw their name to be the first speaker in the chat  
6 window, please do so now. Okay. Eric Butler, brave soul,  
7 wants to go first. Eric, if you would unmute yourself,  
8 control D.

9           MR. ERIC BUTLER: Hopefully I'm unmuted.

10          MR. PRIMO: You are.

11          MR. BUTLER: So I'm Eric Butler. I'm a Deputy  
12 Jefferson County Attorney, and I wanted to on behalf of  
13 Jefferson County and also other interested counties give a  
14 couple of comments on COBCA. First, I want to talk about  
15 (unintelligible - 0:10:40) rights under 4.4.5. And second,  
16 the method of service or notice to counties under Proposed  
17 Rule 3.2.

18               4.4.5 says that the director's decision on a  
19 bargaining unit is final and conclusive and not appealable,  
20 but my understanding from the statement of basis is that  
21 the Division isn't intending to cut off all appellate  
22 rights with that language. If that's the case though, I  
23 think the wording of this remains to be changed a bit.  
24 When there's words like "final" and "conclusive" and "not  
25 appealable" appear to eliminate the rights of all

1 interested parties, so both employer and employee  
2 organizations to appeal that.

3           We understand the Division is placing an emphasis  
4 on moving these petitions along efficiently. We appreciate  
5 that. We also appreciate that ultimately that decision is  
6 going to be a largely factual decision and the Division's  
7 going to get clearer error review on it. What we would  
8 propose though is something along the lines of language  
9 that states that that decision as to the scope of the  
10 bargaining unit is not a final agency decision and is  
11 appealable after the election results are certified  
12 pursuant to the Proposed Rule 6.1. That would more clearly  
13 I think preserve the rights to appeal at a later time.

14           Second, the service issue, 3.2, we are concerned  
15 as counties about receiving timely notice and being able to  
16 effectuate the direction of the state promptly. Counties  
17 get notices from the state in a variety of contexts. In  
18 other contexts, these go a lot of different places. They  
19 might go to HR. They might be mailed to the Board of  
20 County Commissioners. They might go to a Division director  
21 or an elected official. We've even had official notices  
22 uploaded onto our citizen comment portal from the state.

23           All of these things can create delay in our  
24 ability to respond and the person who gets the notice  
25 doesn't even necessarily know what to do with it or who it

1 should go to. Given again the Division's emphasis on  
2 prompt action here, what we would suggest is a process that  
3 requires at least counties to register a contact to receive  
4 notices from the state to be served in applicable  
5 proceedings. We believe that will help minimize delays.

6 As an example, CRS 24-32-116 requires that local  
7 governments designate an agent to receive notices of claim,  
8 and the Department of Local Affairs maintains that list and  
9 it's available online as interested parties. So following  
10 that sort of process or a similar process would allow  
11 everyone, especially the state but everyone to know exactly  
12 who to send a notice to and allow us to more promptly do  
13 whatever it is we need to do. In particular, one of the  
14 first things as counties we may have to do is send out a  
15 notice to county employees after a petition is received by  
16 the state. And that's Rule 4.1.4 I believe. I suggest  
17 that perhaps even that rule itself can refer back to  
18 whatever process was instituted in 3.2.

19 Bottom line though, a set registry and a known  
20 person who knows to expect to see these notices from the  
21 state would be very helpful to us.

22 MR. MOSS: Thank you, Mr. Butler. Appreciate  
23 those suggestions.

24 MR. PRIMO: Thank you. And any follow-up from  
25 you, Scott or anybody else to Eric? No. Okay. Olivia

1 Lucas, you are the next in line to speak if you would  
2 unmute yourself, control D.

3 MS. OLIVIA LUCAS: Okay. Can you hear me?

4 MR. PRIMO: Perfect. Yes.

5 MS. LUCAS: Okay. Excellent. Hello, everybody.  
6 I'm Olivia Lucas. I'm a Senior Assistant County Attorney  
7 with Boulder County, and I'll also be speaking on the COBCA  
8 Rules today. Boulder County has been working with other  
9 counties. We've tried to consolidate our thoughts on these  
10 rules and present them in bits and pieces here at this  
11 hearing, and so I'll be speaking today. I have a couple  
12 questions on clarification for two parts of the rules  
13 related to appeals. And so just going in order as they  
14 appear in the rules, I'll start with Rule 5. That's the  
15 appeals related to a Division determination under the  
16 unfair -- determination, sorry, of an unfair labor practice  
17 complaint.

18 In its April 13th, 2023, statement of basis and  
19 purpose, the Division notes that under Rule 5 that rules  
20 are trying to follow the administrative procedures for  
21 unfair labor practice complaints and appeals set forth in  
22 the State Labor Relations Rules and the Labor Peace Act and  
23 Industrial Relations, the LPIR Rules. But it appears on  
24 reading that the COBCA Rules diverge from those other sets  
25 of rules in a way that's somewhat confusing, at least in

1 terminology and not certain on intent either.

2           And what I mean specifically is that the COBCA  
3 Rules characterize the hearing after the Division  
4 determination on an unfair labor practice complaint they  
5 determine that they sort of characterize that as an appeal  
6 of that Division determination. And that's actually in  
7 contrast as I read them of the LPIR Rules which allow for a  
8 hearing on the Division's determination if the parties  
9 request it. Otherwise, the determination becomes final  
10 agency action.

11           And it looked like to me that characterizing the  
12 hearing as an appeal in the COBCA context it was confusing  
13 because the rules go on to describe sort of practices that  
14 are normally perceived as what would happen at an initial  
15 hearing and not as an appeal of a decision on the record.  
16 For example, Rule 5.4.4 allows the hearing officer to  
17 subpoena documents and other records deemed necessary as  
18 evidence, and Rule 5.4.6 allows new testimonial evidence  
19 and new nontestimonial evidence for good cause again at  
20 this appeal hearing. Then 5.4.2 states that the hearing  
21 officer will review finding of facts for clear error and  
22 finding of law de novo. That part indicates that the  
23 hearing officer is going to review the Division's  
24 investigation and determination but allowing new facts in  
25 and new testimony seems to fuzzy at best the appellate

1 review nature of the hearing and really positions the  
2 appeal as a new hearing on the totality of the complaint.

3           So we suggest more closely following the LPIR  
4 Rules related to investigations and hearings just for  
5 clarity or if the intent is that the hearing officer will  
6 review just the record of the Division's determination for  
7 error, sort of more like what you consider a traditional  
8 appellate approach, then we suggest that the rules reflect  
9 that. For example, they could instruct the hearing officer  
10 if there is a party requests new evidence, they could  
11 instruct the hearing officer to send the question back to  
12 the Division to consider the new evidence before going to  
13 appeal.

14           And then the next rule I'd like to ask about is  
15 Rule 6 which Eric talked about a little bit, discussing  
16 judicial review. Two subparts to that. First, we're  
17 seeking clarity on the reference to CRS 24-50-1115 at the  
18 end of the rule and that statute relates to the State  
19 Employee Act. And so just curious as to what the intent  
20 there was and how those two would meld.

21           And then also at the beginning of that Rule 6.1  
22 there's the phrase "unless otherwise stated", then it goes  
23 on "a decision by the director," etcetera, "constitutes a  
24 final agency action." And sort of like Mr. Butler  
25 mentioned, there's not a -- that we could see a statement

1 otherwise in the rules about something not being a final  
2 agency action. So I think this sort of goes with his  
3 proposal that things like the determination of the  
4 appropriate bargaining unit could be identified as that in  
5 itself not a final agency action but what is a final agency  
6 action because there are statements elsewhere in the rules  
7 about decisions that aren't appealable but nowhere that we  
8 saw were stated that they're not final agency actions. So  
9 we would seek clarity around that.

10 And those are my comments. Thank you.

11 MR. MOSS: Thank you, Ms. Lucas. Appreciate the  
12 points and suggestions.

13 MR. PRIMO: Yes. Thank you, Olivia. David, you  
14 are up if you can unmute yourself by hitting control D.

15 MR. DAVID AYRAUD: I can. Hopefully you can hear  
16 me now.

17 MR. PRIMO: I can hear you perfectly. Thank you,  
18 David.

19 MR. AYRAUD: Thank you. My name is David Ayraud.  
20 I'm the Deputy County Attorney for Larimer County. As you  
21 heard from both Eric Butler and Olivia Lucas, we've been  
22 working with sort of a group of counties, so I am yet just  
23 the third bringing information to you from this meeting of  
24 us. What I will do is just address two Rules, 4.4 and 4.6.  
25 4.4 actually sort of blends in with some of the issues that

1 both Mr. Butler and Ms. Lucas brought up, so I'll start  
2 with that one.

3           In particular, 4.4.1 -- well 4.4 discusses the  
4 appropriate bargaining unit disputes, and there aren't a  
5 lot of details of how that process goes forward. And so we  
6 would ask for some clarification regarding that. First, it  
7 references if there's a disagreement over the determination  
8 of the appropriate bargaining unit. Our understanding is  
9 that once there's a determination, there's a determination,  
10 but this is really the process of if there's a question or  
11 a dispute prior to that determination. That may be  
12 semantics, but we think it's important to just clarify that  
13 this is the process for when there is a disagreement over  
14 what the appropriate bargaining unit is or should be, not  
15 the determination of it because no determination has been  
16 made yet.

17           Second, in 4.4 there really aren't any timeframes  
18 for how this process would work, and we totally understand  
19 this is the first time that the Division is going through  
20 it. It's the first time all of us are really going through  
21 it. But we would ask for some sort of clarification of  
22 default processes. For example, we'd suggest once the  
23 director requires notice be sent out under 4.1.4 that there  
24 be 15 days after that distribution so that people can  
25 proceed with that dispute.



1           We'd also ask about is there a process such as  
2           briefs, timeframes. Will replies be allowed? We recognize  
3           the Division's going to need to have some flexibility to  
4           sort of change those, and so if the rule allows the  
5           Division to modify those as appropriate, it will still give  
6           us some default to what to expect and how to proceed at  
7           that point. So realizing that this is sort of a out-of-  
8           the-shoot situation, we would still really appreciate the  
9           Division putting some defaults in place, even if you give  
10          yourselves some flexibility afterwards.

11           Rule 4.4.2 talks about in the event of an  
12          intervenor-initiated dispute regarding the positions to be  
13          included in the appropriate bargaining unit. Our  
14          understanding is this would be applicable for any dispute,  
15          so we would suggest removing an intervenor-initiated and it  
16          just say in the event of a dispute regarding the positions  
17          to be included. And that would allow the bargaining unit  
18          or proposed bargaining unit, the employer, whomever is  
19          interested to be able to bring that forward to the  
20          Division.

21           The other rule was 4.6. 4.6, it has a similar  
22          theme as to the 4.4 discussion and that is that there are  
23          no parameters in place. There's no defaults. And that is  
24          particularly concerning given that the employee  
25          organizations, the counties, the employees themselves and

1 even the Division, this will be their first time dealing  
2 with this, so we don't really have any idea of what to  
3 prepare for and the rules aren't really clarifying any of  
4 that. It's just currently saying within 10 days of a  
5 determination of a sufficient showing of interest. Then  
6 the Division will issue timeframes, procedures all of  
7 these.

8           We recognize that the Division needs to have some  
9 flexibility, and there may be some authority in there that  
10 says hey you can modify this at the preelection conference  
11 which is when you're proposing to make all of the rules up  
12 right now. But to have some default in place would be  
13 really important for everyone involved because right now  
14 we're all going to walk into it blind and have no idea what  
15 to expect, how fast we're going to have to do it.

16           So if there could be some defaults regarding the  
17 time that an election is expected or anticipated to occur,  
18 establishing whether or not that would be conducted over  
19 one, two or three days to account for employee schedules,  
20 clarifying in person, mail in, no proxies, what election  
21 materials are allowed, what the requirements for cleanup.  
22 Totally understand the Division may need to modify that  
23 based on what the situation is, but it gives everybody some  
24 default to know what we're all walking into together so  
25 that we can make suggestions to the Division at the

1 preelection conference.

2           There was a request from a number of counties --  
3 and it seems rather appropriate -- is there is a lot of  
4 information that employees are given upfront to be able to  
5 make this decision, but there was a comment I believe that  
6 was made at the very beginning on is there a disclosure of  
7 the dues that would be expected of the employees if there  
8 was a bargaining unit established and that is devoid from  
9 the rules. So we really think it's fair for the employees  
10 to have all the information so that they know what it is  
11 they're voting on in all facets including from their  
12 financial side. Counties are obligated to do so when they  
13 put tax measures on the ballot. Seems equally fair that  
14 the employees have this information when they're going to  
15 make a decision as well.

16           And the last one is 4.6.4 which is about  
17 electioneering. There isn't really a definition of  
18 electioneering. I don't know if it would be consistent --  
19 I mean county employees, because we run a lot of elections,  
20 are probably more familiar with the electioneering  
21 definitions and rules for elections, so that may be the  
22 most helpful. 1-45-103(9) gives a definition for  
23 electioneering. It also sets the distance at 100 feet. It  
24 just seems like there could be some consistency so that  
25 people are much more familiar with this election as it

1 compares to other elections that they're familiar with at a  
2 county level. So those would be some requests for  
3 clarification in 4.6.

4 MR. MOSS: Thank you very much for the  
5 suggestions and input, Mr. Ayraud.

6 MR. PRIMO: Yes. Thank you, David. Okay.  
7 Moving on, Jessica Campbell-Swanson, you are listed to  
8 speak. If you would like to hit control D on your  
9 computer. That muted you.

10 MS. JESSICA CAMPBELL-SWANSON: I had already  
11 unmuted.

12 MR. PRIMO: Yes. I can hear you. Thank you.

13 MS. CAMPBELL-SWANSON: Okay. Hi. Thank you.  
14 And nice to see you, Mr. Moss. Thank you all for having us  
15 here. I am Jessica Campbell-Swanson. I am here to speak  
16 on Collective Bargaining for County Employees Act. I am a  
17 County Commissioner in Arapahoe County. I'm also a former  
18 union member for the Political Workers Guild affiliated  
19 with the Communication Workers of America and an attorney  
20 with a background in election law. So my comments are here  
21 coming mostly from on behalf of the county but are informed  
22 and my prospective is here informed by the other  
23 experiences that I've had. I want to thank CDLE for the  
24 opportunity to provide comments.

25 And the experiences that I have are informed by a

1 need for clear procedures and to ensure all individuals  
2 have an understanding of the process. And being informed  
3 by the election law experience, that's really kind of how  
4 we were -- as we've had discussions as a county and then as  
5 a board and how I've looked at these and where my comments  
6 largely will go. We appreciate the efforts to establish a  
7 comprehensive set of regulations but do believe there are  
8 additional provisions necessary prior to the adoption of  
9 the final rules that would benefit all parties with  
10 additional clarity that would also supply predictability.  
11 And I think that's what we've heard a lot of comments going  
12 to already, and ours is similar to that.

13           So we will be providing commentary in writing as  
14 well, and my comments will be focused on three themes. So  
15 additional details regarding process and requirements,  
16 clarifying the role of director and need for further  
17 definition of key terms.

18           So in additional processes and requirement  
19 details, the final rules we're hoping will outline the  
20 procedures for the conduct of representation elections  
21 beyond what the statutory language that seems to be  
22 incorporated into these draft rules currently has in Rule  
23 4.6. I think it's very important to avoid any ambiguity  
24 about the process.

25           Knowing similar to what previous speakers have

1 said, we are kind of -- we're all going into this for the  
2 first time, so if there is flexibility for different sizes  
3 or whatever, I mean I think I'm not -- we don't want to be  
4 overly stringent so as to be too much of a burden. We  
5 really do feel like clarity around these rules will provide  
6 predictability for all parties participating. So at a  
7 minimum, we hope that proposed rules provide a general  
8 timeline of significant events and occurrences common to  
9 all representation elections and minimum or default  
10 procedures for the conduct of those elections in the  
11 absence of agreement between the parties.

12           There should be minimum standards for the conduct  
13 of mailed ballot elections as well to ensure election  
14 integrity and process and predictability and ensure the  
15 parties of a fair and impartial election. The current  
16 proposed rules do not contain these minimum standards and  
17 simply assert that the procedures will be established  
18 later. We would like them lined up ahead of time. I don't  
19 know the case-by-case basis would necessarily provide for  
20 that fairness and predictability.

21           I mean we know that there are some counties that  
22 are more favorable to collective bargaining and some that  
23 are not. And if I were a worker in a county that was not,  
24 I would want procedures set out so I know my rights to  
25 collective bargaining and self-determination will be set

1 out the same as other counties that are more favorable. I  
2 think also if I was an employee in a county that is more  
3 favorable to collective bargaining but I personally was  
4 not, I would want these processes to ensure that I'm not --  
5 that things are going by plan, right. That there's not  
6 unfair pressure on either side.

7           Anyway, so there are several references to  
8 processes instructions being provided later by the director  
9 relative to petitions, 4.1.1, a voluntary recognition,  
10 4.1.5, and decertification, 4.3.2. And while we do  
11 appreciate the need for some flexibility in developing  
12 these items, we're hoping for some minimum direction and  
13 guideposts so the parties have certainty as to the  
14 processes that will be implemented.

15           And we encourage the -- we have looked at the  
16 National Labor Relations Act as a model, and so I think two  
17 speakers before me was talking about the LEI or the LRI,  
18 something that has some consistency that's lined up in  
19 processes that people are already familiar with would make  
20 some sense.

21           So also no guidance or assurances for the parties  
22 on how the Division will resolve questions concerning the  
23 sufficiency of a showing of interest. There isn't any now.  
24 We're looking for insight into how the Division director  
25 will make that determination. Also in the proposed rules

1 they don't contain any procedural elements for parties to  
2 challenge or dispute the composition of a proposed  
3 bargaining unit or eligibility of the proposed bargaining  
4 unit members to participate in an election. Again, we're  
5 just looking for procedures. We're looking for minimum  
6 standards and clarity around that and providing standard  
7 language that is required for both election materials and  
8 the showing of interest authorization cards will reduce  
9 confusion for all parties.

10           So I mean back in election the science behind  
11 what goes on a ballot so that it's as clear as possible has  
12 been well tested, and even specific language is mandated on  
13 these elections. And when we're talking about bargaining  
14 units happening all over the state this is one area that I  
15 think clarity and a little mandated language would not  
16 disadvantage or advantage either party in any unfair way  
17 but would just provide clarity for those who are making a  
18 decision and reduce confusion.

19           Director authority, we are looking -- the rules  
20 contain a few but not very many clear limits or definitions  
21 on the director's authority. We're kind of looking for  
22 some guideposts there so we know at least factors that will  
23 go into how decision are made again for clarity and  
24 predictability.

25           I think several of the rules -- the conflict of



1 the rules in some places, they seem to conflict with each  
2 other and state law has already been noted, and our  
3 comments will speak to that. So I think clarifying that  
4 will be good. Especially Rule 4.4 and Rule 4.5 seem to  
5 maybe be in contradiction with themselves and state law.  
6 So just a note there.

7           And then further definition of key terms, the  
8 rules appear to contain several terms of art that are not  
9 adequately defined, so we're looking at the -- David Ayraud  
10 before me spoke about electioneering. Good cause was  
11 another term that was used in a couple places in the rules  
12 but not defined.

13           And we also are looking for a standard for  
14 written signatures, wanting that to be the same for both  
15 the showing of interest and the casting of actual ballots.  
16 Again, consistency, clarity, predictability in this  
17 process.

18           Proposed Rule 5.2.2, hoping that can be clarified  
19 to articulate limitations or circumstances in which the  
20 Division will be permitted to shorten a response deadline  
21 for unfair labor practice charges. I think it's easier to  
22 extend a deadline. It's hard to shorten a deadline, and  
23 there may be reasons for that need for timeliness, but not  
24 knowing what those are is a challenge. So some clarity  
25 around that would be helpful.

1           And then also we're looking for a better  
2 explanation of the appeals process set forth in Proposed  
3 Rule 5.4 to verify only the record of evidence may be  
4 considered versus allowing new testimonial and documentary  
5 evidence. And I know other speakers have spoken to that as  
6 well.

7           So again, thank you for allowing our  
8 participation and considering these changes in things that  
9 we've noted. I again want to just reiterate that we are  
10 looking for just clarity and predictability for -- and I am  
11 literally thinking about this from the process of being an  
12 employee to being someone who is maybe on the union side to  
13 being a commissioner as well and just wanting to make sure  
14 that we have a process that is predictable and fair so that  
15 our employees can really make clear decisions that are best  
16 for themselves and that we are -- that all parties know how  
17 to behave appropriately, and we don't get into those power  
18 tensions and all of that. And I think that's where rules  
19 really do come in handy in helping us create fair processes  
20 that are predictable and reliable for all parties involved.  
21 So thank you very much.

22           MR. MOSS: Thank you, Ms. Campbell-Swanson.  
23 Appreciate the suggestions and input. I'll add that you  
24 mentioned written comments are probably coming.

25           MS. CAMPBELL-SWANSON: Yes, sir.

1           THE HEARING OFFICER: Okay. So two thoughts  
2 there. One is that as much as possible if you have  
3 specific language to suggest or options, it could be that  
4 for any rule, it could be that you have one suggestion or  
5 you could have alternative suggestions, any are okay. And  
6 I'll add that the deadline is the 28th. To the extent that  
7 as I'm sensing these may be very detailed and a number of  
8 suggestions, if they come on the 28th, that's fine. We've  
9 worked in for ourselves a cushion to read them. We're not  
10 adopting rules the next day. We have almost two weeks.  
11 But if they can come any earlier than the 28th, every day  
12 helps. But if they come on the last day, that's fine too.  
13 We will read and consider them.

14           MS. CAMPBELL-SWANSON: Yes. We already I think  
15 have a proposed draft, and I will make sure that we  
16 incorporate your note there of specific language or  
17 suggestions. And we will get them to you as promptly as  
18 possible, sir.

19           MR. MOSS: Sure. I'll also add that specific  
20 language is not -- and this is true for anybody --  
21 required. It could be that there's some rule where you'll  
22 say this is not specific enough. Please do better, but you  
23 don't have anything specific. That is fine too. It's just  
24 that if you have specific language, we'd be happy to hear  
25 it, and it often can flesh out the sort of clarity you're

1 looking for, whether or not we go with that language. So  
2 thank you.

3 MS. CAMPBELL-SWANSON: Appreciate it. Thank you  
4 very much.

5 MR. MOSS: Great.

6 MR. PRIMO: Thank you both. Next on the list is  
7 Javier. Javier, if you're on the call, if you would hit  
8 control D on your laptop to unmute yourself.

9 MR. JAVIER HERES: Hi. Am I unmuted?

10 MR. PRIMO: Yes. Perfect.

11 MR. HERES: Okay. Sorry about that. Hello,  
12 everyone. This is Javier Heres and Larry Lee speaking on  
13 behalf of Mesa County to comment on the COBCA proposed  
14 rules. First and foremost, we fully endorse and join in  
15 the comments submitted by the other counties during today's  
16 hearing, particularly the comments made by Boulder,  
17 Larimer, Jefferson and Arapahoe Counties.

18 Moving on to our second point, we would like to  
19 incorporate by reference the December 13, 2022, letter by  
20 the county attorneys and note for the record that most of  
21 the initial issues and legal questions raised by the  
22 counties in that letter were not addressed in the proposed  
23 rules.

24 Lastly, we seek a clarification on the procedures  
25 that must be followed to obtain the approval of the Board

1 of County Commissioners after an agreement has been  
2 negotiated. As per Section 113(1) of COBCA, the board's  
3 approval is required. However, the COBCA proposed rules  
4 and the Division's statement of basis and purpose do not  
5 provide any guidance on the specific steps that must be  
6 taken to comply with this requirement.

7 Those are our comments. Thank you.

8 MR. PRIMO: Thank you, Javier. Any follow up  
9 from Director Moss?

10 MR. MOSS: No. Thank you for your comments and  
11 input, Mr. Heres.

12 MR. PRIMO: With that, that is everybody that's  
13 inputted their names onto the chat. Is there anybody here  
14 by computer that would like to comment? You can throw your  
15 name in the chat, raise your hand or hit control D on your  
16 laptop and begin speaking. If you're having any technical  
17 difficulties, you can chat me in the chat window and I can  
18 try to walk you through. Otherwise, control D on your  
19 laptop to unmute yourself. You can raise your hand or put  
20 your name in the chat window if you'd like to speak.

21 MR. MOSS: And we will wait another minute or two  
22 in case anyone is either struggling with the unmute buttons  
23 or keys or in case anyone is thinking about whether to  
24 speak following the conclusion of the past several  
25 speakers. So we'll sit here and just wait a minute or two

1 to see if anyone else on reflection thinks they have  
2 anything to add or finally wins the battle with the mute  
3 button.

4 MR. PRIMO: Well with that, we'll also ask is  
5 there anybody here by phone that would like to speak? You  
6 can hit star six on your phone to unmute yourself. If  
7 you're here by laptop or by computer, you can put your name  
8 in the chat window, hit control D to unmute yourself or  
9 raise your hand and we will call on you. Okay. Once  
10 again, if you'd like to speak, you can hit control D on  
11 your laptop, put your name in the chat window, star six if  
12 you're by phone or raise your hand.

13 At this time there does not appear to be anyone  
14 else who would like to speak. Director Moss, would you  
15 like to say any final words?

16 MR. MOSS: No. We'll just give it another --

17 MR. PRIMO: Minute.

18 MR. MOSS: -- one more minute to see if anyone  
19 else wants to say anything starting now. We'll all be  
20 quiet and have a moment of silence while we see if anybody  
21 else wants to say anything.

22 And hearing no further speakers for the past  
23 roughly five minutes, we're calling an end to the hearing.  
24 The time is about to be 3:48 p.m. which we're closing  
25 testimony. We thank you all for coming and for speaking.

1           To reiterate again, anyone who has any further  
2 comments can submit them via the address in the comment  
3 window. For those of you here by phone, again it's  
4 [cdle.colorado.gov/laborrules](http://cdle.colorado.gov/laborrules) where labor and rules are one  
5 word combined. At that site you'll see the proposed rules,  
6 the statement of basis as well as our link to submit  
7 comments or you can email any comments to Mike Primo at the  
8 address also in the comment window. That's  
9 [Michael.primo@state.co.us](mailto:Michael.primo@state.co.us).

10           With that, the time is 3:48. I thank you all for  
11 coming, and those of you who spoke, appreciate it. We look  
12 forward to seeing any follow-up written comments. And with  
13 that, the hearing is concluded.

14           (Whereupon, the hearing was adjourned.)

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1 STATE OF COLORADO )

2 CITY AND COUNTY OF DENVER )

3 I hereby certify that the above and foregoing  
4 constitutes a transcript of all the audible testimony taken  
5 at a hearing in Denver, Colorado, on April 18, 2023, in the  
6 COBCA & Labor Relations Rules Public Hearing, which hearing  
7 was digitally recorded by the State of Colorado and  
8 transcribed by me to the best of my ability.

9 Dated at Hernando, Mississippi, this 18th of May,  
10 2023.

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Michelle Eaves

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Transcriptionist

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Ditto Transcripts

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