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EXECUTIVE ORDER

Authorizing Partnership Agreements with State Employees

Pursuant to the authority vested in the Office of the Governor of the State of Colorado, I, Bill Ritter, Jr., Governor of the State of Colorado, hereby issue this Executive Order authorizing partnership agreements with state employees.

I. Background and Purpose

Over the past ten months, my administration has initiated a series of state government reforms that reflect modern management principles and well-recognized best-management practices. These changes are designed to enhance the delivery of services and products to the people of Colorado and are intended to make state government more effective, efficient, reliable, and accountable.

The success of these reforms depends on our ability to partner with and fully engage our workforce. State employees possess unique insights, skills, and ingenuity about the public services they provide. By establishing a formal employee partnership program similar to practices undertaken in the private sector, state government managers and frontline workers will be able to jointly craft workplace goals and expectations and to collaborate on strategies to achieve those goals.

In today's twenty-first century marketplace, chief executive officers must constantly seek out new and better ways of leading their organizations. The same is true with state government. Examples in both the private and public sectors demonstrate that employee-management cooperation that engages and empowers employees in decision-making around service planning and implementation is likely to produce better service, more cost-effective provision of services, and a healthier work environment. Employee partnerships will foster collaboration and cross-fertilization of ideas between those in management and those whose daily jobs give them concrete knowledge of what can be done better, and how; what need not be done, and why; and what else should be done, and by whom.

From snowplow drivers to corrections officers, state troopers to clerks and administrative personnel, state employees provide essential services and work under difficult and sometimes dangerous conditions. Truly engaging these employees so they become more positive and productive contributors to the organization and the decision-making process requires a structure

to facilitate their involvement. Employee-management partnerships provide that structure. Employees who feel empowered are more likely to be engaged in the services the state provides its citizens and to feel ownership of the work they do for the public's benefit.

The purpose of this Executive Order is to establish the framework for employee partnerships in service of a smarter, more effective, more efficient and more accountable state government for the citizens of this State.

II. Definitions

- A. "Executive Branch" means those principal departments set forth in C.R.S. § 24-1-110.
- B. "Covered Employee" means an individual who is employed in the "personnel system of the state," as set forth in section 13 of article XII of the Colorado Constitution, unless the individual falls into any of the following categories:
1. confidential employees;
 2. managerial employees;
 3. supervisory employees;
 4. Senior Executive Service employees;
 5. members of the Colorado National Guard;
 6. Director of the Division of Labor, the Governor's Designee, and those employees working with the Director and the Designee to implement the provisions of this Executive Order;
 7. administrative law judges and attorneys whose responsibilities include providing legal advice;
 8. student employees;
 9. individuals in the custody of the Department of Corrections or any law enforcement agency;
 10. patients or residents of a state institution;
 11. temporary employees employed for six months or less.

The Governor's Designee will make the initial determinations regarding the applicability of these exclusions. Any party objecting to such a determination may appeal to the Director of the Division of Labor.

- C. "Supervisory employee" means an employee who is an appointing authority, as that term is used in Personnel Board Rule 1-8 through 1-11 (version effective July 1, 2005). A supervisory employee does not include an employee who performs the human resource functions of an appointing authority by delegation, as permitted by Personnel Board Rule 1-8.
- D. "Employee Organization" means an organization in which Covered Employees may participate and that exists for the purpose of dealing with the State as

employer concerning issues of mutual concern between employees and the State. Employee Organizations that seek representation rights for employees pursuant to this Executive Order shall designate to the Governor's Designee and the Director of the Division of Labor an agent for service and shall also comply with all other guidelines established by the Director of the Division of Labor. Employee organizations may affiliate or jointly file with other employee organizations for the purpose of seeking certification and fulfilling responsibility of negotiations and employee representation as set forth in this Executive Order. Notice of an intent to affiliate or jointly file by two or more employee organizations shall be given by those employee organizations to the Director of the Division of Labor and to the Governor's Designee.

- E. "Certified Employee Organization" means an employee organization selected by a majority of the employees voting in a secret ballot election held pursuant to Section III(B) below. An employee organization certified as the exclusive representative of employees of an appropriate Partnership Unit shall be:
1. entitled to exclusively represent all employees in the Partnership Unit on issues covered by this Executive Order;
 2. responsible for representing the interests of all Covered Employees within a Partnership Unit on issues covered by this Executive Order without discrimination and without regard to employee organization membership; and
 3. entitled to have organizational membership dues collected from members of the Certified Employee Organization by payroll deduction pursuant to C.R.S. § 24-50-104(8)(c) and (d).
- F. "Governor's Designee" means the person the Governor designates as the individual who shall represent the Executive Branch in the exercise of all of the Executive Branch's responsibilities under this Executive Order. The Governor shall make his designation in writing to the Director of the Division of Labor.
- G. "Partnership Agreement" means an agreement arrived at through good faith discussions between the Governor's Designee, on behalf of the Executive Branch, and representatives of the Certified Employee Organizations, on behalf of the employees, that provides for improving government services, achieving efficiencies, and establishing the framework for discussing issues of mutual concern to the employees and the State. As necessary, Partnership Agreements may address issues on a multi-unit basis, agency-specific basis, or occupational group-specific basis, and can include memos of understanding directed to particular issues or objectives.
- H. "Partnership Unit" means a unit consisting of Covered Employees in a single occupational group. Those occupational groups are currently as follows: Administrative Support and Related Services; Enforcement and Protective Services; Financial Services; Health Care and Medical Services; Labor, Trades,

and Crafts; Physical Sciences and Engineering; Professional Services and Teachers; and Troopers.

III. Directives

A. Neutral Party Designee

The Director of the Division of Labor is hereby directed to serve as the neutral party charged with implementing and administering this Executive Order, as set forth herein. The Director of the Division of Labor shall have the authority to:

1. appoint a panel to advise and make recommendations to the Director of the Division of Labor regarding matters delegated to the Director under this Executive Order;
2. appoint qualified, disinterested, mutually acceptable mediators to assist parties in resolving impasses and disputes, issue findings of fact, and/or make recommendations to the parties;
3. conduct elections and make determinations regarding certification of exclusive representation;
4. appoint election monitors to take complaints regarding the conduct of elections and to make recommendations regarding the disposition of such complaints;
5. resolve the issues that may arise under this Executive Order; and
6. promulgate such guidelines and establish such procedures as may be necessary for the proper implementation of this Executive Order.

B. Determination of Representation

The Director of the Division of Labor shall certify an Employee Organization as the exclusive representative of a Partnership Unit if the organization is designated as its representative by a majority of those Covered Employees voting within the Partnership Unit.

An employee organization may petition for certification by submitting a petition for representation to the Director of the Division of Labor with a copy to the Governor's Designee. The petition must be accompanied by a timely showing of interest indicating the desire of the Covered Employees in a Partnership Unit to be exclusively represented by the petitioner for the purpose of negotiating a Partnership Agreement. The show of interest must be signed and dated by the employee after the date of this Executive Order but within one year of submission. A Covered Employee who is a dues-paying member of an Employee Organization shall be deemed to have expressed a show of interest in favor of the Employee Organization in which he or she is a member unless and until the Covered Employee expresses a contrary intent in writing. In the event that the show of interest accompanying the petition is thirty percent (30%) or more of the employees in the Partnership Unit, the Director of the Division of Labor shall direct that an election be held. Within ten (10) calendar days of determination that a valid petition has been submitted and election is necessary, the Director of the Division of Labor shall notify interested employee organizations and the Governor's Designee of the pending election petition.

Any interested Employee Organization that wishes to intervene in the election must submit a petition of intervention which must be accompanied by a showing of interest supported by thirty percent (30%) of the employees in the appropriate Partnership Unit indicating their desire to be exclusively represented by the intervenor for the purpose of negotiating a Partnership Agreement. Such an intervention petition must be filed within fifteen (15) calendar days of notice of the pending election petition.

An election under this Executive Order shall be held in accordance with guidelines established by the Director of the Division of Labor. In an election, Covered Employees will have the option of voting to be exclusively represented by the petitioning Employee Organization, any of the intervening Employee Organizations, or to reject representation by any Employee Organization (i.e., a vote of “no”). Elections may take place by mail ballot, on-site balloting, or a combination thereof. Employee Organizations seeking certification under this Executive Order shall bear the costs associated with conducting and administering the certification elections. Those costs shall include printing, postage, and other supplies, as well as any temporary staff or overtime deemed necessary in order to verify signatures, to staff or monitor polling places, and/or determine the results of an election. In the event that two or more Employee Organizations are seeking certification in a single election, the costs of conducting and administering the election shall be borne equally by the respective Employee Organizations.

In the event that none of the alternatives listed on the ballot receives a majority of the valid ballots cast in the Partnership Unit in any initial representation election held pursuant to this Executive Order, a run-off election shall be held between the Employee Organization that received the highest number of votes cast in the initial election and the option of rejecting representation by any Employee Organization. In the event that an Employee Organization receives the majority of the valid ballots cast in the Partnership Unit, the Director of the Division of Labor shall certify that Employee Organization as the exclusive representative of the Covered Employees in the Partnership Unit.

Neither the Director of the Division of Labor nor any management or supervisory employee may encourage or discourage membership in any Employee Organization nor encourage or discourage exclusive representation of employees by any Employee Organization.

Certification of an Employee Organization as an exclusive representative shall continue so long as such organization satisfies the criteria of this Executive Order and subsequent guidelines applicable to certification. A petition to decertify an existing exclusive representative may be filed in the same manner as a petition for certification, except that no decertification petition may be filed for any Partnership Unit if:

1. an election has been held in that Partnership Unit within the preceding twelve (12) months;
2. an exclusive representative for that Partnership Unit has been certified within the preceding two (2) years; or
3. the Partnership Unit has in effect a valid occupational-group specific Partnership Agreement that, by its terms, does not exceed three (3) years

in duration; provided, that the limitation imposed by this paragraph shall not bar the filing of a decertification petition within the ninety (90) day period immediately preceding the expiration of such Partnership Agreement.

If a decertification petition is filed, the existing exclusive representative shall be deemed an intervenor on that petition and will not be required to submit the show of interest.

C. Filing Requirements for Certified Employee Organizations

Each Certified Employee Organization shall file and thereafter keep current with the Director of the Division of Labor the following documents: the organization's constitution and by-laws; a list of the organization's officers and their addresses; and a copy of the most recently completed audit. The required copy of the audit shall be that which is required to be completed by the Certified Employee Organization's constitution and bylaws. A Certified Employee Organization may file the constitution and by-laws of its national or international organization in lieu of a filing of the constitution and by-laws of the subordinate organization. The filing requirements set forth in this paragraph shall be reasonably construed by the Director of the Division of Labor so as to allow for several organizations to affiliate or jointly file to seek certification pursuant to this Order. The documents filed pursuant to this paragraph shall be public records.

D. Negotiating Partnership Agreements

The Governor's Designee and the representatives of Certified Employee Organizations have a mutual obligation to negotiate, in good faith at reasonable times and places, the terms of a Partnership Agreement. The discussions regarding Partnership Agreements can be initiated by the Governor's Designee or in response to a proposal by a Certified Employee Organization or a coalition of Certified Employee Organizations. As set forth below, a particular Partnership Agreement may be negotiated, depending upon the nature of the issues subject to the Agreement, on a statewide basis, occupational group basis, or departmental basis.

1. Partnership Agreements on Matters Necessitating Statewide Uniformity

Partnership Agreements that govern discussions of matters impacting all Covered Employees as a whole or that necessitate statewide uniformity (whether Constitutionally, by statute or rule, or as a practical matter) shall be negotiated on a collaborative basis with all Certified Employee Organizations. The negotiation of such a Partnership Agreement shall be conducted by the Governor's Designee in concert with the executive officials charged with administering the issues subject to the Agreement (such as the Director of the Department of Personnel and Administration), on the one hand, and a designee or negotiating team selected by a coalition of the Certified Employee Organizations, on the other hand. Such a Partnership Agreement is subject to the approval of the Governor and other officials charged with administering the issues subject to the Agreement.

2. Partnership Agreements on Matters Affecting Individual Occupational Groups

Partnership Agreements that govern discussions of matters impacting Covered Employees in a single occupational group shall be negotiated with the Certified Employee Organization representing that occupational group, on the one hand, and the Governor's Designee in concert with the executive officials charged with administering the issues subject to the Agreement (such as the Director of the Department of Personnel and Administration), on the other hand. Such a Partnership Agreement is subject to the approval of the Governor and other officials charged with administering the issues subject to the Agreement.

3. Partnership Agreements on Matters Involving Particular Departments

Partnership Agreements that govern discussions of matters impacting Covered Employees in a single department shall be negotiated by the Executive Director of such department in concert with the Governor's Designee, on the one hand, and a designee or negotiating team selected by a coalition of the Certified Employee Organizations representing Covered Employees in the respective department, on the other hand. Such a Partnership Agreement is subject to the approval of the executive director of the department and the Governor. The Executive Directors in the following Departments are directed to negotiate, in good faith, a Partnership Agreement with the Certified Employee Organizations representing the Covered Employees in their departments: Department of Agriculture; Department of Corrections; Department of Higher Education; Department of Health Care Policy and Financing; Department of Human Services; Department of Labor and Employment; Department of Local Affairs; Department of Military and Veterans Affairs; Department of Natural Resources; Department of Personnel and Administration; Department of Public Health and Environment; Department of Public Safety; Department of Regulatory Agencies; Department of Revenue; Department of Transportation. The Attorney General, Secretary of State, Treasurer, State Board of Education, and governing boards of institutions of higher education may, at their discretion, elect to negotiate Partnership Agreements with Certified Employee Organizations representing Covered Employees in their respective departments or institutions.

4. Limitations on Scope of Partnership Agreements

Nothing in any Partnership Agreement may diminish the Governor's discretion to prepare his proposed budget, including setting the amount allocated to total employee compensation in that proposed budget. Neither this Executive Order nor any Partnership Agreement negotiated hereunder may expand the authority of the Office of the Governor, the Department of Personnel and Administration, or the Department of Labor and Employment beyond that authorized by the Colorado Constitution or the Colorado Revised Statutes. Furthermore, nothing in this Executive Order shall diminish nor shall any Partnership Agreement usurp department heads', college and university presidents', and higher education governing boards' responsibility and accountability for the actual operation and management of the state personnel system for their respective departments, colleges, or universities, as provided for by Colo. Const. art. VIII, § 5 and C.R.S. § 24-50-101(d). Moreover, a Partnership Agreement may not include a requirement or agreement that the Executive Branch or any department negotiate with respect to any of the following

matters: (1) matters constitutionally and statutorily delegated to the State Personnel Board; (2) the statutory function of any department or agency; or (3) matters related to the Public Employees' Retirement Association.

E. Impasse and Dispute Resolution

In the event the parties reach an impasse in the course of negotiating a Partnership Agreement, either the Governor's Designee or a representative of a Certified Employee Organization may request that the Director of the Division of Labor appoint a disinterested third party to mediate any dispute over the terms and conditions of a Partnership Agreement. The appointed mediator may make non-binding written recommendations to the parties for resolution of the impasse. Upon completion of negotiation, the parties, if they are able to reach agreement, shall execute a written Partnership Agreement.

The terms of a Partnership Agreement may provide procedures for resolving disputes, including disputes over the interpretation and application of a Partnership Agreement. These dispute resolution procedures may include non-binding mediation and/or fact finding, but may not include binding arbitration.

F. No Strike or Work Stoppage

Partnership Agreements negotiated pursuant to this Executive Order shall contain an agreement not to strike. Moreover, it shall be a violation of this Executive Order for any Certified Employee Organization to engage in or threaten a strike, work stoppage, work slowdown, sickout, or other similar disruptive measure against the State of Colorado or any of its agencies. In the event of a violation of this provision by a Certified Employee Organization, that organization may be decertified by the Director of the Division of Labor and shall not be entitled to payroll deductions of any membership dues.

IV. Duration

This Executive Order shall remain in force until modification or rescission by the Governor.

GIVEN under my hand and
the Executive Seal of the
State of Colorado, this 2nd
day of November, 2007.

Bill Ritter, Jr.
Governor