SUMMARY
September 14, 2023

2023COA80

No. 22CA1260, *Colorado Workers v. Gherardini* — Administrative Law — State Administrative Procedure Act — Hearings and Determinations — Initial Decisions — Judicial Review — Final Agency Action; State Personnel System — Colorado Partnership for Quality Jobs and Services Act; Labor and Industry — Colorado State Labor Relations Rules — Appeals of Coverage Decisions by the State Personnel Director

In this administrative appeal, a division of the court of appeals reviews the district court's judgment affirming the decision of a hearing officer for the Division of Labor Standards and Statistics (Division), which determined that a state employee was not a covered employee under the Colorado Partnership for Quality Jobs and Services Act. The division concludes as a matter of first impression that the hearing officer's decision, reviewing a coverage decision made by the State Personnel Director under section 24-50-1106(4), C.R.S. 2023, was not a final agency action subject only to

judicial review under section 24-4-106, C.R.S. 2023, of the State Administrative Procedure Act (APA), but was an "initial decision" subject to further review by the agency under section 24-4-105(14)(a)(II), C.R.S. 2023, of the APA. The division also declares void Division Rule 5.7, 7 Code Colo. Regs. 1103-12, which provides to the contrary. Because the district court held otherwise, the division reverses the judgment and remands to the district court with directions to remand the matter to the Division to conduct the proceedings contemplated by section 24-4-105.

COLORADO COURT OF APPEALS **2023COA80**

Court of Appeals No. 22CA1260
City and County of Denver District Court No. 21CV32782
Honorable A. Bruce Jones, Judge

Colorado Workers for Innovative and New Solutions,

Plaintiff-Appellant,

v.

Anthony Gherardini, in his official capacity as State Personnel Director, and Colorado Department of Labor and Employment, Division of Labor Standards and Statistics,

Defendants-Appellees.

JUDGMENT REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division V
Opinion by JUDGE BROWN
Navarro and Yun, JJ., concur

Announced September 14, 2023

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Philip J. Weiser, Attorney General, John August Lizza, First Assistant Attorney General, Krista Maher, Senior Assistant Attorney General, Gabrielle Falcon, Assistant Attorney General Fellow, Denver, Colorado, for Defendant-Appellee Colorado Department of Labor and Employment, Division of Labor Standards and Statistics

¶ 1 Plaintiff, Colorado Workers for Innovative and New Solutions (WINS), appeals the district court's judgment affirming the decision of a hearing officer for defendant, the Division of Labor Standards and Statistics (Division).[1] The hearing officer determined that state employee Marc Morgan was not a covered employee under the Colorado Partnership for Quality Jobs and Services Act (Partnership Act). WINS contends that the district court erred by concluding that the hearing officer's decision was a final agency action subject to judicial review under section 24-4-106, C.R.S. 2023, of the State Administrative Procedure Act (APA), rather than an initial decision subject to further agency review under section 24-4-105(14)(a)(II), C.R.S. 2023, of the APA.

¶ 2 We agree with WINS and conclude that the hearing officer's decision was an "initial decision" that should have been appealable to the agency under section 24-4-105(14)(a)(II); it was not the final decision of the Division subject only to judicial review under sections 24-4-106 and 24-50-1115(1), C.R.S. 2023. In reaching

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[1] Defendant Anthony Gherardini, in his official capacity as the State Personnel Director, is also an appellee, but because his arguments align with the Division's, for simplicity we refer only to the Division.

this conclusion, we declare void Division Rule 5.7, 7 Code Colo. Regs. 1103-12, which provides that the hearing officer's decision "constitutes a final agency action" under section 24-4-106, and that "[a] party may seek judicial review" of the hearing officer's decision under section 24-50-1115(1).

¶ 3 Because the district court reached a contrary conclusion, which denied WINS its statutory right to appeal the hearing officer's initial decision to the agency, we reverse the judgment. We remand to the district court with directions to remand the matter to the Division to conduct the proceedings contemplated by section 24-4-105.

I. The Partnership Act and Appeals of Coverage Disputes

¶ 4 In 2020, the General Assembly enacted the Partnership Act to formalize labor-management partnerships between classified state employees in the state personnel system and the executive branch of the state government. *See* H.B. 20-1153, 72d Gen. Assemb., 2d Reg. Sess. (Colo. 2020). The Partnership Act allows a "certified employee organization" to represent "covered employees" in bargaining collectively with the state over wages, hours, and terms and conditions of employment. §§ 24-50-1102, -1109, -1112,

C.R.S. 2023. A "[c]ertified employee organization" is "an employee organization that has been certified as the representative of covered employees in a partnership unit." § 24-50-1102(1). A "[c]overed employee" is "an employee who is employed in the personnel system of the state established in section 13 of article XII of the state constitution," unless that employee falls into any one of eight exempt categories. § 24-50-1102(3).

¶ 5 One such exemption is for an "[e]xecutive employee"

> (a) Whose primary duty is management of the entity in which the employee is employed or of a customarily recognized department or subdivision thereof;
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> (b) Who customarily and regularly directs the work of two or more other employees; and
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> (c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees are given particular weight.

§ 24-50-1102(8); *see also* § 24-50-1102(3)(c).

¶ 6 The state agency for which an employee works makes the initial determination as to whether an employee is a covered employee under the Partnership Act. If there is a dispute about

"whether certain employees are appropriately classified as covered employees," the certified employee organization or the state may file a petition for review by the State Personnel Director. § 24-50-1106(4), C.R.S. 2023.[2] "Appeals of the [State Personnel Director's] decision shall be brought to the [D]ivision for adjudication." *Id.* Finally, the certified employee organization or the state "may seek judicial review of the [D]ivision's decisions or orders on classification of covered employees under section 24-50-1106(4) . . . in the manner and with the effect provided in the 'State Administrative Procedures Act', article 4 of this title 24, and rules promulgated thereunder." § 24-50-1115(1).

¶ 7 The Partnership Act empowers the Division to promulgate rules necessary for its enforcement. § 24-50-1103, C.R.S. 2023. To that end, the Division adopted rules governing appeals of the State Personnel Director's coverage decisions that are more specific than the Partnership Act. *See* Div. Rule 5, 7 Code Colo. Regs. 1103-12. In relevant part, Division Rules 5.5 and 5.6 provide that, upon

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[2] The Partnership Act defines "[d]irector" as "the state personnel director established in section 14 of article XII of the state constitution, or [their] designee." § 24-50-1102(5), C.R.S. 2023.

receipt of a notice of appeal of the State Personnel Director's coverage decision, "the Division shall assign a hearing officer" who "shall make a decision on each relevant issue raised, including findings of fact, conclusions of law, and an order sustaining, overruling or modifying the ruling of the State Personnel Director." *Id.* Most critical to our analysis, Division Rule 5.7 specifies that "[t]he hearing officer's decision constitutes a final agency action pursuant to C.R.S. § 24-4-106" and that "[a] party may seek judicial review" of the hearing officer's decision under section 24-50-1115(1). *Id.*

II. Background and Procedural History

¶ 8 In 2018, the Colorado Department of Public Health and Environment (CDPHE) hired Morgan as a "Communities that Care Work Lead," classified as a Public Health and Community Outreach Professional (PHCO) IV. Morgan was employed to "provide strategic oversight, direction and execution of the youth substance abuse prevention grants to local communities across Colorado." In 2019, Morgan's position was reclassified as a PHCO V, a position with more supervisory authority. In 2021, Morgan received notice that

CDPHE had determined that he was a "non-covered" employee under the Partnership Act.

¶ 9 As the certified employee organization for the partnership unit composed of all covered employees under the Partnership Act, *see* § 24-50-1105, C.R.S. 2023, WINS sought review by the State Personnel Director of CDPHE's determination that Morgan was not a covered employee. The State Personnel Director affirmed CDPHE's decision and clarified that Morgan's position was not covered because his job duties fell within the executive employee exemption. *See* § 24-50-1102(8).

¶ 10 WINS appealed the State Personnel Director's decision to the Division, and the Division assigned the matter to a hearing officer. In a written order, the hearing officer sustained the State Personnel Director's coverage decision. Noting that WINS did not contest that Morgan met the first two requirements of the executive employee exemption, the hearing officer concluded that the State Personnel Director had established the third requirement — that Morgan's "suggestions and recommendations as to the hiring, firing, advancement, promotion, or other change of status of other employees are given particular weight." § 24-50-1102(8)(c).

¶ 11 At the end of the hearing officer's order, there was an "Appeal Rights" section that advised as follows:

> This decision is final unless you appeal it within 30 calendar days of the decision date listed above. Any party can appeal this decision. *To appeal this decision, you must file written exceptions with the Director of the Division of Labor Standards and Statistics, in accordance with Colo. Rev. Stat. § 24-4-105(14)(a)(II), and 7 Code Colo. Regs § 1103-12: Rule 5.7.* If no party files written exceptions with the Director of the Division within 30 calendar days of this decision, this decision shall become the final agency decision. Colo. Rev. Stat. § 24-4-105(14)(b)(III). Failure to file exceptions may result in a waiver of the right to judicial review of the final agency decision. *Id.* at §[] 24-4-105(14)(c).

(Emphasis added.) The email transmitting the hearing officer's order gave the same advisement regarding how to appeal.

¶ 12 WINS filed a request for clarification of the appeals process, noting the conflict between the appeal advisement in the hearing officer's order — which referenced the exceptions and agency review procedure for an "initial decision" issued by a hearing officer set forth in section 24-4-105(14)(a)(II) — and Division Rule 5.7 — which deemed the hearing officer's decision "a final agency action" subject only to judicial review under section 24-4-106. *Compare* § 24-4-

105, *with* Division Rule 5.7, 7 Code Colo. Regs 1103-12. A week later, WINS timely filed exceptions to the hearing officer's order pursuant to section 24-4-105.

¶ 13 The next day, the hearing officer issued a corrected order, which explained,

> The prior Decision & Order in this appeal has been rescinded, and this corrected reissued Decision is effective as of the date set forth herein. The prior rescinded Decision contained an incorrect statutory reference in its introductory paragraph and final section, entitled "Appeal Rights." This corrected reissued Decision contains a revised introductory paragraph and "Appeal Rights" section, setting forth the appeal process provided by Rule 5.7 of the State Labor Relations Rules, 7 Code Colo. Regs. 1103-12 (2021), which mirrors the longstanding appeals process in place for the vast majority of matters adjudicated by the Division of Labor Standards & Statistics.

The corrected order advised that any party wishing to appeal must do so by filing "an action for judicial review in a Colorado district court of competent jurisdiction" and cited sections 8-1-130, 24-4-106, and 24-50-1115, C.R.S. 2023. The hearing officer also issued a "Notice Regarding Exceptions," concluding that the exceptions

WINS filed were moot and explaining that the appeal process detailed in Division Rule 5.7 controlled.

¶ 14 WINS appealed the hearing officer's order to the district court, arguing in relevant part that the Division should have adhered to the exceptions and appeal procedures set forth in section 24-4-105(14)(a)(II) of the APA. The court concluded that the hearing officer's order was final and affirmed it. The court reasoned that, although no conflict existed between the appeal procedures set forth in the Partnership Act and those set forth in the APA, a conflict did exist between the APA and a provision of the Division's organic statute. Specifically, the court concluded that section 8-1-118, C.R.S. 2023 — which provides that the Director of the Division "shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as provided in this article or by the rules of the [D]ivision" — "trumps the application of the APA." Thus, the court concluded that the Division had the "authority to determine what constitutes final agency action capable of judicial review" and "lawfully promulgated" Division Rule 5.7, so it was not required to comply with section 24-4-105.

III. The Hearing Officer's Order Was an Initial Decision Subject to the Exceptions and Appeal Procedures in Section 24-4-105(14)(a)(II)

¶ 15 WINS contends that the district court erred by concluding that the hearing officer's order was a final agency action subject to judicial review under section 24-4-106, rather than an initial decision subject to further agency review under section 24-4-105(14)(a)(II). We agree.

¶ 16 We first conclude that no conflict exists between the appeal procedures set forth in the Partnership Act and those in the APA; rather, the APA fills the procedural gap left by the Partnership Act when the Division assigns a hearing officer to decide an appeal of the State Personnel Director's coverage decision under sections 24-50-1106(4) and 24-50-1115(1). We also conclude that nothing in the Partnership Act or the Division's organic statute authorizes the Division to promulgate a rule that deprives a party of its right to appeal a hearing officer's decision via the exceptions procedure provided in section 24-4-105(14)(a)(II). Because Division Rule 5.7 does just that, it is void. *See Hanlen v. Gessler*, 2014 CO 24, ¶ 35 ("A rule that conflicts with a statute is void." (citing § 24-4-103(8)(a), C.R.S. 2023)).

A. Standard of Review

¶ 17 We interpret statutes de novo to determine and give effect to the General Assembly's intent. *See Fontanari v. Colo. Mined Land Reclamation Bd.*, 2023 COA 15, ¶¶ 14-15. "We look first to the statutory language, giving the words and phrases used therein their plain and ordinary meanings." *Id.* at ¶ 15 (quoting *Krol v. CF & I Steel*, 2013 COA 32, ¶ 15). And "[w]e read the language in the dual contexts of the statute as a whole and the comprehensive statutory scheme, giving consistent, harmonious, and sensible effect to all of the statute's language." *Id.* (quoting *Krol*, ¶ 15). If the legislative intent is clear from the plain language of the statute, we enforce it as written and need not consider other indicators of legislative intent. *Id.*

¶ 18 Similarly, we construe an administrative regulation or rule de novo using common rules of statutory interpretation. *Schlapp v. Colo. Dep't of Health Care Pol'y & Fin.*, 2012 COA 105, ¶ 9. "Rules promulgated by an agency are presumed to be valid, and plaintiffs bear the burden of demonstrating that a rule-making body has exceeded its statutory authority." *Table Servs., LTD v. Hickenlooper*, 257 P.3d 1210, 1217 (Colo. App. 2011). Even so, "[a]n

administrative agency regulation must further the will of the General Assembly and may not modify or contravene an existing statute." *W. Colo. Congress v. Colo. Dep't of Health*, 844 P.2d 1264, 1267 (Colo. App. 1992) (citing *Miller Int'l, Inc. v. State*, 646 P.2d 341 (Colo. 1982)). Consequently, "[a]ny regulation which is inconsistent with or contrary to a statute is void and of no effect." *Id.*; *see also* § 24-4-103(8)(a) ("Any rule . . . issued by any agency . . . which conflicts with a statute shall be void."); *Fontanari*, ¶ 24 (voiding a rule prescribing procedures for agency review that conflicted with a statute).

¶ 19 We may consider and "give considerable weight to" an agency's reasonable interpretation of its own enabling statute and regulations, but we are not bound by the agency's interpretation. *Specialty Restaurants Corp. v. Nelson*, 231 P.3d 393, 397 (Colo. 2010); *see also Bd. of Cnty. Comm'rs v. Colo. Pub. Utils. Comm'n*, 157 P.3d 1083, 1088 (Colo. 2007). Indeed, under the APA, we must set aside an agency action that is "[a] denial of [a] statutory right" or "[i]n excess of statutory jurisdiction, authority, purposes, or limitations." § 24-4-106(7)(b)(II), (7)(b)(IV), (11); *see also W. Colo. Congress*, 844 P.2d at 1266.

B. The Appeal Procedures Governing Coverage Disputes Under the Partnership Act Can Be Harmonized with the Appeal Procedures in the APA

¶ 20 We must first determine whether the appeal procedures governing disputes about whether an employee is a covered employee under the Partnership Act conflict with the appeal procedures in the APA. If they do, the Partnership Act controls; if they do not, the Division must follow both. We conclude that the APA does not conflict with, but rather supplements, the appeal procedures set forth in the Partnership Act.

¶ 21 "Generally, the APA serves as a gap-filler, and its provisions apply to agency actions unless they conflict with a specific provision of the agency's statute or another statutory provision preempts the provisions of the APA." *Marks v. Gessler*, 2013 COA 115, ¶ 29 (quoting *V Bar Ranch LLC v. Cotten*, 233 P.3d 1200, 1205 (Colo. 2010)). If the APA applies to a particular agency, "both the APA and statutes specific to that agency should be read together and harmonized to the extent possible; however, if a provision of the APA and the agency's statute conflict, the agency-specific provision controls." *Id.* (quoting *V Bar Ranch LLC*, 233 P.3d at 1205); *see also* § 24-4-107, C.R.S. 2023 ("[W]here there is a conflict between [the

APA] and a specific statutory provision relating to a specific agency, such specific statutory provision shall control as to such agency.").[3]

¶ 22 To "assure that all parties to any agency adjudicatory proceeding are accorded due process of law," section 24-4-105 of the APA requires that certain procedures be followed. § 24-4-105(1). With respect to appeals of agency decisions, section 24-4-105(14) provides in relevant part as follows:

> (a) . . . In any case in which the agency has conducted the hearing, the agency shall prepare, file, and serve upon each party *its decision*. In any case in which an administrative law judge or a hearing officer has conducted the hearing, the administrative law judge or the hearing officer shall prepare and file *an initial decision* that the agency shall serve upon each party, *except where all parties with the consent of the agency have expressly waived their right to have an initial decision rendered by such administrative law judge or hearing officer*. Each decision and initial decision must include a statement of findings and conclusions upon all the material issues of fact, law, or discretion presented by the record and the appropriate order, sanction, relief, or denial. *An appeal to the agency must be made as follows*:

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[3] The APA "applies to every agency of the state having statewide territorial jurisdiction." § 24-4-107, C.R.S. 2023. There is no dispute that the Division is an agency subject to the APA.

> . . . .
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> (II) *With regard to initial decisions regarding agency action . . . , by filing exceptions within thirty days after service of the initial decision upon the parties* . . . .
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> . . . .
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> [(b)](III) In the absence of an exception filed pursuant to subparagraph (II) of paragraph (a) of this subsection (14), the initial decision . . . shall become the decision of the agency . . . .

(Emphasis added.) An "[i]nitial decision" is defined as "a decision made by a hearing officer or administrative law judge which will become the action of the agency unless reviewed by the agency." § 24-4-102(6), C.R.S. 2023.

¶ 23 Thus, under the APA, "any decision made by a hearing officer or administrative law judge is an initial decision, which becomes final only if no exceptions or agency motion are submitted within the allotted time." *W. Colo. Congress*, 844 P.2d at 1266; *see also Lanphier v. Dep't of Pub. Health & Env't*, 179 P.3d 148, 150 (Colo. App. 2007) ("An initial decision does not become the final decision of an agency until the statutorily established time for appealing the decision to the agency has expired."). Requiring further agency review of a hearing officer's initial decision gives the agency the

opportunity to correct any errors without the need for judicial review. *W. Colo. Congress*, 844 P.2d at 1266.

¶ 24 In contrast, if the decision sought to be appealed is a "decision by an agency that conducts a hearing" in the first instance, or if an initial decision by a hearing officer has become "final" either because no party filed exceptions or because the initial decision was affirmed by the agency upon review, the decision is a "final agency action" subject to judicial review as provided in section 24-4-106. §§ 24-4-105(14)-(15), 24-4-106(2).

¶ 25 The sparse appeal procedures in the Partnership Act do not conflict with these provisions of the APA. Section 24-50-1106(4) provides that "[a]ppeals of [coverage] decision[s]" made by the State Personnel Director "shall be brought to the [D]ivision for adjudication." Section 24-50-1115(1), in turn, provides that the certified employee organization or the state "may seek judicial review of the *[D]ivision's decisions or orders* on classification of covered employees under section 24-50-1106(4) . . . in the manner and with the effect provided in the [APA], article 4 of this title 24, and rules promulgated thereunder." (Emphasis added.)

¶ 26 Thus, like the APA, the Partnership Act provides that orders entered *by the Division* on appeal of the State Personnel Director's coverage decisions are final and subject to judicial review under section 24-4-106. But the Partnership Act does not contemplate that such appeals will be resolved by a hearing officer or detail what procedures apply to review the hearing officer's decision. Nor does the Partnership Act provide that the hearing officer's decision constitutes a final agency action under such circumstances.

¶ 27 In the absence of these details, we look to the APA to fill the gap. *See Marks*, ¶ 29. An appeal "brought to the [D]ivision for adjudication" under section 24-50-1106(4) is an "adjudicatory proceeding" to which section 24-4-105 applies. *See* § 24-4-105(1); *see also* Black's Law Dictionary 865 (11th ed. 2019) (An "adjudication hearing" means "[a]n agency proceeding in which a person's rights and duties are decided after notice and an opportunity to be heard."). It follows that, if the Division assigns a hearing officer to decide appeals of the State Personnel Director's coverage decisions under the Partnership Act, the hearing officer's decision is an initial decision subject to further agency review by the exceptions procedure set forth in section 24-4-105(14)(a)(II). In

this way, the Partnership Act and the APA can be harmonized, and the Division is obligated to follow both.

C. Division Rule 5.7 Is Void Because It Conflicts with the APA

¶ 28 The Division contends that it had the authority under the Partnership Act and under its organic statute, §§ 8-1-101 to -153, C.R.S. 2023, to determine the procedures governing coverage appeals. The Division promulgated Rule 5.7, which provides that a hearing officer's decision "constitutes a final agency action pursuant to [section] 24-4-106" and that "[a] party may seek judicial review of the decision pursuant to [section] 24-50-1115(1)." 7 Code Colo. Regs. 1103-12.

¶ 29 True, rules promulgated by an agency are presumed to be valid, *see Table Servs., LTD*, 257 P.3d at 1217, and an agency's reasonable interpretation of its enabling statute is entitled to deference, *see Specialty Restaurants Corp.*, 231 P.3d at 397. But we conclude that Rule 5.7 is void and of no effect because (1) the Division is not authorized by either the Partnership Act or its organic statute to promulgate a rule that circumvents the agency review procedures in the APA; and (2) the rule is contrary to, and deprives the parties of their right to further agency review of the

hearing officer's decision under, section 24-4-105(14). *See W. Colo. Congress*, 844 P.2d at 1266.

¶ 30 First, although the Partnership Act authorizes the Division to promulgate rules for its enforcement, *see* § 24-50-1103(1), it does not authorize the Division to adopt rules that would replace or bypass the APA procedures for appealing decisions made by hearing officers. We have already discussed the relevant sections of the Partnership Act, and the Division does not point us to any other provision that would grant it such authority.

¶ 31 The Division's organic statute similarly authorizes the Director of the Division to promulgate rules "to govern the proceedings of the [D]ivision and to regulate the manner of investigations and hearings." § 8-1-107(2)(p), C.R.S. 2023. But no statutory provision evidences the General Assembly's intent to authorize the Division, when adopting such rules, to depart from the procedures in section 24-4-105(14) to resolve appeals of coverage disputes under section 24-50-1106(4) of the Partnership Act.

¶ 32 The Division directs us to section 8-1-118, which the district court concluded "trumps the application of the APA." That section provides as follows:

> The director, or persons designated by [them], shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as provided in this article or by the rules of the division, but [they] may make such investigations in such manner as in [their] judgment are best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this article.

¶ 33 By its plain language, this section provides that the Director of the Division is not bound by rules of evidence or procedure in carrying out "justly the spirit of *this article*." *Id.* (emphasis added). The article referenced in the provision is article 1 of title 8, not article 50 of title 24. *Id.*; *see also San Isabel Elec. Ass'n v. Bramer*, 182 Colo. 15, 21, 510 P.2d 438, 441 (1973) ("The commission is not bound to follow rigid rules of evidence in justly administering the [Act]."); *Ross v. Indus. Comm'n*, 39 Colo. App. 204, 207, 566 P.2d 367, 369 (1977) (pursuant to section 8-1-118, "proceedings at an Industrial Commission hearing are sufficiently informal so as to permit the employer's representative to question witnesses and introduce evidence when invited to do so by a hearing officer"). The provision does not prescribe procedures for review of decisions

made by hearing officers or purport to alter what constitutes final agency action.

¶ 34 The Division also points to section 8-1-130, which provides that the Director of the Division "has full power to hear and determine all questions within [their] jurisdiction, and [their] findings, award, and order issued thereon shall be final agency action" for which affected persons "may seek judicial review as provided in section 24-4-106." This provision supports rather than undermines our analysis. Nothing in section 8-1-130 addresses the delegation of decision-making authority to a hearing officer or what review procedures apply to decisions issued by hearing officers. More importantly, a decision by *the Director of the Division* is the same as a decision *by the Division*. Both constitute final agency action subject to judicial review under section 24-4-106. But if the Director's or the Division's decision-making authority is delegated to a hearing officer, further agency review is required by section 24-4-105(14).

¶ 35 The Division essentially argues that because the Partnership Act does not expressly *require* it to follow the procedures in section 24-4-105(14), it has the power to promulgate a rule that

circumvents those procedures. Following that argument to its logical conclusion, the Division would have any authority not expressly restricted by the Partnership Act. But "[t]he constitutional doctrine of separation of powers mandates that agencies act only within the scope of their delegated authority." *Hawes v. Colo. Div. of Ins.*, 65 P.3d 1008, 1016 (Colo. 2003). Thus, the power of administrative agencies extends only so far as the authority conferred on them by statute. *Id.* (citing *Flavell v. Dep't of Welfare*, 144 Colo. 203, 206, 355 P.2d 941, 943 (1960)). The APA applies to the Division as a state agency, and nothing in the Partnership Act or the Division's organic statute expressly or impliedly provides otherwise.

¶ 36 Had the General Assembly intended to authorize the Division to bypass the procedures set forth in section 24-4-105, or had it intended to make a hearing officer's decision resolving a coverage dispute under the Partnership Act final agency action, it knew how to make that intent clear. For example, in the context of wage disputes, the General Assembly specified that "[t]he hearing officer's decision constitutes a final agency action pursuant to section 24-4-106" and "[a]ny party to the administrative proceeding may appeal

the hearing officer's decision only by commencing an action for judicial review in the district court." § 8-4-111.5(5), C.R.S. 2023. Moreover, section 8-4-111.5(3)(b) provides that "[t]he provisions of the 'State Administrative Procedure Act' . . . and particularly section 24-4-105, C.R.S., do not apply to hearings under this article." Neither the Partnership Act nor article 1 of title 8 includes analogous language. *Cf.* § 25.5-1-107, C.R.S. 2023 (hearings on appeals from decisions of county departments of human or social services by recipients of and applicants for medical assistance and welfare that are conducted by an administrative law judge are considered initial decisions subject to review under section 24-4-105(14)(a)(I), but hearings initiated by a licensed or certified provider of services that are conducted by an administrative law judge "shall be considered final agency action and subject to judicial review in accordance with the provisions of section 24-4-106").

¶ 37 Second, because Division Rule 5.7 unilaterally delegates final decision-making authority to the hearing officer, it conflicts with section 24-4-105(14), "which, absent express waiver by the parties, *requires* an initial decision." *W. Colo. Congress*, 844 P.2d at 1267.

Thus, Division Rule 5.7 is void and of no effect. *See id.*; *Fontanari*, ¶ 24; § 24-4-103(8)(a).

¶ 38 WINS was statutorily entitled to appeal the hearing officer's initial decision to the agency by filing exceptions. *See* § 24-4-105(14)(a)(II). The record reflects that it timely filed such exceptions but was denied further agency review. Accordingly, the district court's judgment affirming the hearing officer's decision cannot stand.[4]

IV. Disposition

¶ 39 We reverse the judgment and remand to the district court with instructions to remand to the Division to conduct further proceedings consistent with section 24-4-105.

JUDGE NAVARRO and JUDGE YUN concur.

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[4] WINS also contends that the district court erred by upholding the hearing officer's conclusion that Morgan was not a covered employee under section 24-50-1102(3) of the Partnership Act. Given our disposition, we need not address that argument.