

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
)	
District of Columbia Nurses Association,)	PERB Case No. 16-I-07
)	
Petitioner,)	Opinion No. 1602
)	
and)	
)	Decision and Order
District of Columbia Department of Health,)	
)	
Respondent.)	
)	

DECISION AND ORDER

On September 29, 2016, the District of Columbia Nurses Association (“DCNA”) filed a Notice of Impasse (“Notice”) pursuant to PERB Rules 526 *et seq.* and 527 *et seq.* DCNA asserts that it reached an impasse with the District of Columbia Department of Health (“DOH”) during impact and effects (“I&E”) bargaining over the relocation of the DOH Immunization Clinic.¹ During negotiations, DOH accepted four of DCNA’s proposals, and rejected two proposals. DCNA now asks PERB to find that the parties are at impasse and to appoint a mediator from the Federal Mediation and Conciliation Service to help the parties reach a resolution on DCNA’s rejected proposals.²

The Board’s impasse procedures are reserved for negotiations related to collective bargaining and compensation agreements, not for I&E bargaining.³

Indeed, the impasse procedures outlined in PERB Rule 526 *et seq.* are by their express terms reserved for negotiations of compensation agreements pursuant to D.C. Official Code §§ 1-617.17 *et seq.* DCNA states that its compensation agreement with DOH will not expire until September 30, 2017.⁴ Accordingly, the Board finds that the impasse procedures outlined in PERB Rule 526 *et seq.* are not appropriate for this case.

¹ Notice at 1-2.

² *Id.*

³ See *Am Fed’n of State, Cnty., and Meun. Emp., Dist. Council 20, Local 2401, AFL-CIO and Dist. of Columbia Child and Family Serv. Agency*, 61 D.C. Reg. 12586, Slip Op. No. 1497, PERB Case No. 10-I-06 (2014); see also *Dist. of Columbia Nurses Ass’n and Dist. of Columbia Dept. of Health*, 62 D.C. Reg. 10498, Slip Op. No. 1522, PERB Case No. 15-I-06 (2015).

⁴ *Id.*

Similarly, the impasse procedures outlined in PERB Rule 527 *et seq.* are reserved for negotiations of terms and conditions collective bargaining agreements pursuant to D.C. Official Code § 1-617.01(b)(2).⁵ Accordingly, the Board finds that the impasse procedures outlined in PERB Rule 527 *et seq.* are not appropriate for the I&E stalemate described in DCNA's petition.

DOH unquestionably had a duty to engage in good faith I&E bargaining with DCNA over its decision to move the Immunization Clinic, but that duty did not require DOH to bargain in perpetuity or to reach an agreement on all of DCNA's proposals.⁶ Unlike the negotiation of collective bargaining and compensation agreements, there is not an obligation to reach an agreement during I&E bargaining. Thus, I&E bargaining can never reach "impasse" as defined in PERB Rule 599.1⁷ and therefore does not qualify for the impasse resolution procedures in PERB Rules 526 and 527.⁸ Accordingly, DCNA's Notice of Impasse is denied and dismissed.⁹

ORDER

IT IS HEREBY ORDERED THAT:

1. DCNA's Notice of impasse is denied and the case is dismissed.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Ann Hoffman and Douglas Warshof. Members Yvonne Dixon and Barbara Somson were not present.

November 22, 2016

Washington, D.C.

⁵ See *Am Fed'n of State, Cnty., and Meun. Emp., Dist. Council 20, Local 2401, AFL-CIO and Dist. of Columbia Child and Family Serv. Agency*, 61 D.C. Reg. 12586, Slip Op. No. 1497, PERB Case No. 10-I-06 (2014); see also *Dist. of Columbia Nurses Ass'n and Dist. of Columbia Dept. of Health*, 62 D.C. Reg. 10498, Slip Op. No. 1522, PERB Case No. 15-I-06 (2015).

⁶ See *AFSCME, Dist. Council 20, Local 2401 and CFSA*, 61 D.C. Reg. 12586, Slip Op. No. 1497, PERB Case No. 10-I-06; see also *Dist. of Columbia Nurses Ass'n and Dist. of Columbia Dept. of Health*, 62 D.C. Reg. 10498, Slip Op. No. 1522, PERB Case No. 15-I-06.

⁷ PERB Rule 599.1: "Impasse – The point in collective bargaining negotiations at which no further progress can be made by the parties without the intervention of a neutral third party, except as otherwise defined by the CMPA for compensation bargaining."

⁸ See *AFSCME, Dist. Council 20, Local 2401 and CFSA*, 61 D.C. Reg. 12586, Slip Op. No. 1497, PERB Case No. 10-I-06; see also *Dist. of Columbia Nurses Ass'n and Dist. of Columbia Dept. of Health*, 62 D.C. Reg. 10498, Slip Op. No. 1522, PERB Case No. 15-I-06.

⁹ The Board's decision should not impede the parties from continuing to bargain over DCNA's proposals if they both desire to do so.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-I-07, Op. No. 1602, was transmitted by File & ServeXpress to the following parties on this the 30th day of November, 2016.

Walakewon Blegay, Esq.
D.C. Nurses Association
5100 Wisconsin Avenue, N.W.
Suite 306
Washington, D.C. 20016

Dean Aqui, Esq.
Micahel Levy, Esq.
D.C. Office of Collective Bargaining and
Labor Relations
441 4th Street, N.W.,
Suite 820 North
Washington, D.C. 20001

/s/ Sheryl Harrington
PERB