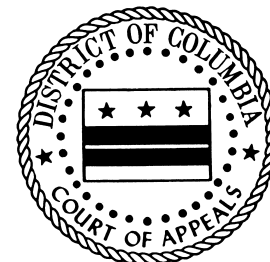


CASE NO. 23-CV-185
(2022 CA 002435 P(MPA))



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**DISTRICT OF COLUMBIA
COURT OF APPEALS**

**AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 872
APPELLANT**

V.

**D.C. PUBLIC EMPLOYEE RELATIONS BOARD
APPELLEE**

**APPEAL FROM THE FEBRUARY 14, 2023 FINAL ORDER
OF
JUDGE SHANA FROST MANTINI
OF THE SUPERIOR COURT OF THE DISTRICT OF
COLUMBIA**

BRIEF OF APPELLANT

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List of the Parties

The parties, in the court below, and in this court are the American Federation of Government Employees, AFL-CIO, Local 872, appellant and petitioner below; D.C. Public Employee Relations Board, appellee and respondent below; and the District of Columbia Water and Sewer Authority, intervenor and respondent below.

Certificate of Redaction

The required Redaction Certificate Disclosure Form follows the Certificate of Service.

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GLOSSARY

Authority. D.C. Water and Sewer Authority

COVID-19 Emergency Act. . COVID-19 Response Emergency
Amendment Act of 2020

CMPA. Comprehensive Merit Personnel Act

Local 872. American Federation of Government Employees,
AFL-CIO Local 872

PERB. D.C. Public Employee Relations Board

Statement of Jurisdiction

This is an appeal from a February 14, 2023 final order, of Judge Shana Frost Matini, J.A. 4-12, denying the appeal of the American Federation of Government Employees, AFL-CIO Local 872 (Local 872), from the decision of the D.C. Public Employee Relations Board, (PERB) in *American Federation of Government Employees, AFL-CIO Local 872 v. D.C. Water and Sewer Authority*, PERB Case No. 22-I-02, PERB Opinion No. 1811, J.A. 13-6. All matters before the Superior Court were disposed of by the February 14, 2023 Order.

Statement of Issues

1. Whether the court committed an error of law, in affirming the opinion of PERB, which held the COVID-19 Emergency Response Amendment Act (COVID-19 Emergency Act) amended D.C. Code § 1-617.08(a)(6) of the Comprehensive Merit Personnel Act (CMPA)
 - (a) Whether the District of Columbia Water and Sewer Authority (Authority) had the authority to unilaterally implement, without bargaining with Local 872, return to work procedures and vaccination requirements.
2. Whether the court erred in ruling the issues, of the authority to impose a vaccination requirement and the expiration of the coronavirus emergency, had not been raised before PERB.

3. Whether the court committed an error of law in ruling PERB had correctly applied the CMPA in ruling the issues raised in the impasse petition were non-negotiable.

Statement of the Case

This is an appeal of the February 14, 2023, order of Judge Shana Frost Matini affirming PERB *Opinion No. 1811* granting the Authority the right to, unilaterally, impose return to work procedures and vaccination requirements, based upon the COVID-19 Emergency Act and D.C. Code § 1-617.08(6) of the CMPA, without bargaining with Local 872. The February 14, 2023 order held the COVID-19 Emergency Act modified D.C. Code § 1-617.08(a)(6), of the CMPA, and the Authority was authorized to take whatever actions were necessary to carry out operations, without bargaining with Local 872 J.A. 8, 11. Judge Matini ruled Local 872 did not raise, before PERB, the issues of whether the vaccination requirement violated the law and whether the emergency authority granted under the COVID-19 Emergency Act had expired, J.A. 8-9. Judge Matini ruled PERB's decision, that the issues in Local 872's petition were non-negotiable, was reasonable and consistent with the law, J.A. 10-1.

On October 15, 2021, Local 872 filed an expedited impasse resolution petition before PERB, J.A. 95. On October 26, 2021, PERB's Executive Director issued a letter, declaring Local 872 and the Authority were at impasse and referred the

parties to mediation, J.A. 132. On November 16, 2021, Local 872 requested PERB refer the parties to interest arbitration, J.A. 72. On December 7, 2021, the Authority filed a motion to dismiss Local 872's request for referral to arbitration, J.A. 73. On January 13, 2022, PERB's Executive Director, administratively, dismissed Local 872's impasse request stating the work requirements and vaccination requirements were non-negotiable and the Authority did not have to bargain, with Local 872, J.A. 82-3.

On January 22, 2022, Local 872 filed a motion to reconsider the Executive Director's administrative dismissal, J.A. 84-9.

On April 29, 2022, PERB issued a decision affirming the administrative dismissal and ruling the COVID-19 Emergency Act and D.C. Code § 1-617.08(a)(6) authorized the implementation of the work procedures and vaccination requirements, without bargaining with Local 872, J.A. 14-5.

Statement of Facts

On October 15, 2021, Local 872 filed the "Union's Request for Expedited Impasse Resolution," with PERB, stating Local 872 and the Authority had reached an impasse in negotiations, over the subjects of return to the worksite, during the coronavirus pandemic and coronavirus vaccination J.A. 95-103. On October 26, 2021, PERB's Executive Director issued a letter finding the parties were at impasse and referred the parties to mediation, J.A. 132. On November 16, 2021, Local 872

filed a request for expedited interest arbitration, J.A. 72. On December 6, 2021, the Authority filed a motion to dismiss Local 872's request for interest arbitration, alleging impasse had not been reached on any negotiable terms, based on PERB Rule 527, J.A. 74-8. On December 21, 2021, Local 872 responded to the Authority's motion stating, the Authority had not declared any subjects non-negotiable during negotiations; the Authority agreed the parties were at impasse; and PERB rules require a declaration of negotiability be made in writing, during negotiations and prior to an impasse determination, J.A. 79-81.

On January 13, 2022, the Executive Director, administratively, dismissed Local 872's impasse case, stating the COVID-19 Emergency Act and D.C. Code § 1-617.08(a)(6) permitted the Authority to unilaterally implement the coronavirus work requirements and the coronavirus vaccination requirements, without bargaining with Local 872, J.A. 82-3. The Executive Director's dismissal ruled the subjects of return to work and coronavirus vaccination were non-negotiable subjects of bargaining based upon the decision in *D.C. Office of Labor Relations and Collective Bargaining v. D.C. Public Employee Relations Board*, No. 003086 P(MPA) (D.C. Super. Ct. September 29, 2021), J.A. 83.

On January 25, 2022, Local 872 filed a motion, with PERB requesting reconsideration of the Executive Director's dismissal, stating the dismissal was contrary to PERB Rule 532, which required a written declaration of negotiability

during negotiations; the dismissal was contrary to PERB's precedent on management rights; the dismissal, in error, applied the COVID-19 Emergency Act to the Authority; the COVID-19 Emergency Act, D.C. Code § 7-2304(b)(16) could not be applied, because the public emergency was ended on July 25, 2021, J.A. 84-9.

On July 24, 2021, the Mayor issued Executive Order 2021-096 ending the public health emergency, on July 25, 2021, *Addendum*.

On April 29, 2022, PERB issued Opinion 1811, affirming the Executive Director's dismissal, stating the COVID-19 Emergency Act and D.C. Code § 1-617.08(a)(6) gave the Authority, an independent agency, the right to implement a management right, without bargaining with the union and the Authority's bargaining with the Union was not a waiver of the right to unilaterally implement the return to work and coronavirus requirements, J.A. 14-5.

On May 31, 2022, Local 872 filed a petition for review in Superior Court, J.A. 3. On October 7, 2022, Local 872 filed a brief, in support of the petition, stating the Authority was an independent agency, not subject to the authority of the Mayor of the District of Columbia; stating PERB's ruling was a violation of law because no authority existed to impose a vaccination requirement; stating the public emergency had expired when the Authority began negotiations over a vaccination requirement; stating the COVID-19 Emergency Act and D.C. Code § 1-

617.08(a)(6) did not authorize unilateral implementation of a vaccination requirement and return to work requirements; and stating the decision violated PERB rules which required a written declaration of negotiability, prior to an impasse determination, J.A. 21-4.

On February 14, 2023, Judge Matini affirmed the PERB opinion and dismissed the petition for review. Judge Matini ruled the vaccination requirement was not raised by Local 872 before PERB, J.A. 9; ruled PERB's interpretation of the negotiability issue was reasonable, consistent with statutory authority, and not clearly erroneous; and ruled the COVID-19 Emergency Act amended D.C. Code § 1-617.08(a)(6) giving management unilateral authority to implement changes, without bargaining with the union, during an emergency, J. A. 9-11.

Summary of the Argument

The Authority, an independent agency of the District of Columbia government, was not authorized under the COVID-19 Emergency Act or D.C. Code 1-617.08(a)(6) to unilaterally implement return to work requirements or vaccination requirements. An issue raised before PERB is subject to review on appeal. Management is required to raise an issue of negotiability, prior to a determination of impasse by PERB.

Standard of Review

In reviewing a decision of an administrative agency, the court examines the factual findings, to determine whether the findings are supported by substantial evidence and not clearly erroneous as a matter of law, *Doctors Council of D.C. General Hospital v. D.C. Public Employee Relations Board*, 914 A.2d. 682, 695 (D.C. 2007), *aff'd. Fraternal Order of Police, Dep't of Corrections Labor Committee v. D.C. Public Employee Relations Board*, 973 A.2d 174, 176 (D.C. 2009). The court will defer to the administrative agency on legal issues, unless the interpretation is unreasonable, in light of prevailing law or inconsistent with the statutes, *Doctors Council*, 914 A.2d 695-6. An administrative determination showing a misconception of the relevant law or a faulty application of the law cannot be affirmed, *id.* The judiciary is the final authority, for interpretation of the Comprehensive Merit Personnel Act (CMPA), *American Federation of Government Employees, National Office v. D.C. Public Employee Relations Board*, 237 A.3d. 81, 87 (D.C. 2020).

Argument

I. The COVID-19 Emergency Act Did Not Amend The CMPA

The D.C. Public Emergency Act of 1980, D.C. Code § 7-2301 et. seq. governs emergency actions, in the District of Columbia government. The District of Columbia Home Rule Act, sets out the powers and duties of the Mayor and the

D.C. Council, D.C. Code §§ 1-204.12 and 1-204.22. D.C. Code §1-204.12 reserves, to the D.C. Council, the right to enact emergency legislation, *District of Columbia v. Washington Home Ownership Council*, 415 A.2d. 1349, 1351-2 (D.C. 1980). D.C. Code § 7-2304 provides authority, to the Mayor of the District, to issue orders to regulate public emergencies and outlines the scope and actions, which may be taken by the Mayor. Subsection 7-2304(b) outlines specific actions permitted to be taken by the Mayor. Emergency executive orders, of the Mayor, expire after fifteen days, unless emergency legislation is adopted by the D.C. Council, D.C. Code § 7-2306(a) and (b).

On March 17, 2020, the D.C. Council enacted emergency legislation to address the coronavirus pandemic. The COVID-19 Response Emergency Amendment Act of 2020, declared a public emergency in the District of Columbia. The COVID-19 Emergency Act amended subsection 7-2304(b), by adding a new subparagraph (16), which listed specific actions the Mayor was authorized to take, during the coronavirus public emergency, notwithstanding the requirements and rules of the CMPA. The actions listed included redeploying employees, modifying tours of duty and places of duty, mandating telework, extending and assigning shifts, providing meals or requiring employees to work without a meal break, assigning additional duties, extending terms of employees, hiring new employees, eliminating annuity offsets, and denying leave and rescinding previously approved

leave.

D.C. Office of Labor Relations and Collective Bargaining v. D.C. Public Employee Relations Board, No. 003086 P(MPA) (D.C. Super. Ct. September 29, 2021), ruled:

PERB's interpretation of the COVID Emergency Act is incorrect because the plain language of the statute removes the personnel actions *listed* [my emphasis] in § 7-2304(b)(16) from the scope of the CMPA and relieves petitioners of any obligation under the CMPA to bargain impact and effects of these management decisions. * * *
The Court's role is limited to determining whether PERB correctly interpreted the COVID Emergency Response Act,

OLRCB v. P.E.R.B. Slip Opinion, pp. 4-5, 8.

The court noted: "The Court agrees with petitioners . . . because the statute whose interpretation is at issue is not the CMPA but the COVID Emergency Act. . . .

[B]ecause the COVID Emergency Act unambiguously makes the CMPA inapplicable when management takes the personnel actions listed specified in §7-2304(b)(16) to address an emergency. . . .," *id at 4*.

The CMPA was not amended by the COVID-19 Emergency Act. *OLRCB* held the specific acts listed, when taken by the Mayor, were exempt from coverage under the CMPA. In this case, Judge Matini relied upon *OLRCB*. *OLRCB*, specifically, states the CMPA was not interpreted or applied in interpreting the COVID-19 Emergency Act. The COVID-19 Emergency Act authorized unilateral actions, by the Mayor. The *OLRCB* decision did not amend the CMPA and specifically

excluded consideration of the CMPA, in ruling on the COVID-19 Emergency Act. On July 24, 2021, the Mayor issued an order ending the public health emergency for the coronavirus, *Addendum*. No public emergency existed when PERB issued Opinion 1811, authorizing the Authority to take unilateral actions to implement return to work requirements and vaccination requirements.

Judge Matini's decision, in error, stated the COVID-19 Emergency Act included covered entities of the District of Columbia and authorized management to take whatever actions were necessary to address the coronavirus emergency, J.A. 8. The D.C. Water and Sewer Authority Enabling Act established the D.C. Water and Sewer Authority (WASA) as an independent agency, that is not subject to the CMPA, except for Subchapter XVII, D.C. Code §§ 34-2202.02(a) and 34-22-2205.15 (a)(1) . The Authority is not subject to the personnel rules and authority of the Mayor of the District of Columbia. *D.C. Water and Sewer Authority v. Delon Hampton & Assoc.* 851 A.2d. 411, 416 (D.C. 2004) following *Dingwall v. D.C. Water and Sewer Authority*, 766 A.2d. 974, 977-8 (D.C. 2001), held the Authority is a separate entity from the District of Columbia government and not included in the term when referring to the District or District of Columbia government, (cited favorably in *Moore v. D.C. Water and Sewer Authority C.A. No. 18-cv-00657, D.D.C. 2018*). Including the Authority, as a covered entity under the COVID-19 Emergency Act and permitting the unilateral taking of personnel

actions, by the Authority, is a clear error of law. The specific language of the act limited the taking of the actions to the Mayor. Nothing in the COVID-19 Emergency Act leads to a conclusion that the actions could be taken by a District of Columbia entity, other than the Mayor.

Judge Matini committed an error of law by upholding PERB's Opinion that the COVID-19 Emergency Act amended the CMPA and authorized the unilateral implementation of work requirements and vaccination requirements, as a management right.

II. The Expiration of the Public Emergency and Vaccination Requirements Were Before PERB

On October 15, 2021, Local 872 filed a request for impasse resolution, with PERB, J.A. 95-103. The issues, in the petition, included Safe Workplace, Avoidance of Working in Close Quarters, Notice of COVID-19, Notice of confirmed COVID-19, Telework and Shift Change, Notice regarding vaccination requirement, Vaccine Cost and Testing, Exemption, Proof of vaccination, and Discipline, *id.* Local 872 and the Authority agreed the parties were at impasse, in the negotiations, J.A. 132. The Executive Director referred the parties to mediation, *id.* After mediation was unsuccessful, Local 872 requested PERB refer the parties to interest arbitration, J.A. 72. On January 13, 2022, PERB's Executive Director, administratively, dismissed Local 872's impasse petition, holding *OLRCB v. D.C. PERB* amended the CMPA and permitted the Authority to take unilateral

action on work requirements and vaccination requirements, during the public emergency, J.A. 82-3. On January 25, 2022, Local 872 filed a motion to reconsider the administrative dismissal, J.A. 84-9. Local 872 stated the dismissal was in error because the public emergency had expired on July 25, 2021 and no statutory emergency authority existed for the unilateral implementation of the return to work and vaccination requirements, *id* at 86-8. Local 872's motion for reconsideration specifically stated:

" The Administrative Dismissal, in error, states the return to work, leave, the vaccine, and other working conditions issues for the coronavirus pandemic are management rights which may be unilaterally implemented, in emergencies. In order for a subject to be covered under the provisions of the 1980- Public Emergency Act, D.C. Code § 7-2304, the Mayor must issue an order which conforms with the actions authorized by the 1980 Public Emergency Act. On July 24, 2021, the Mayor issued Executive Order 2021-096 ending the public health emergency, on July 25, 2021.

WASA was under no statutory emergency authority, when the parties, in this case, entered into negotiations for the vaccine requirement and for the return to work of employees, at WASA. The Administrative Dismissal, in error, relies upon the ruling in *OLRCB v. P.E.R.B.*, which does not apply, because the ruling covers only agencies, subordinate to the Mayor.

J.A. 87.

D.C. Metropolitan Police Dept v. D.C. Public Employee Relations Board, 282

A.3d. 598, 605 (D.C. 2022), ruled a court may only decline to consider an

argument, if it was not first presented before PERB. Local 872 raised, before

PERB, the expiration of the public emergency and the lack of statutory emergency

authority to implement return to work requirements and vaccination requirements. Judge Matini's decision, in error, held the matter was not raised before PERB. The failure of PERB to address Local 872's issue is not determinative. As ruled in *Metropolitan Police*, the party must raise the issue before the administrative agency. Here, Local 872 raised the issue and PERB failed to rule upon the issue. Local 872 raised its argument before the Superior Court and the court's dismissal of Local 872's challenge to the statutory emergency authority, to implement the work requirements and vaccination, is an error of law.

III. Changes In Working Conditions Are Negotiable Subjects For Bargaining

On December 7, 2021, the Authority filed a motion to dismiss, asserting no negotiable issue was in dispute and the proposals, before PERB, were a management right, J.A. 74-8. PERB Rule 532.2 requires a written statement of negotiability be provided, during negotiations, J.A. 29. The Authority had not declared any of the proposals non-negotiable, during negotiations, J.A. 116-131.

The management rights listed in D.C. Code § 1-617.08(a) are permissive subjects of bargaining and PERB's jurisdiction to decide negotiability issues is invoked only by a party submitting to PERB a proposal which has been declared nonnegotiable, *Fraternal Order of Police/Protective Services Police Department Labor Committee and Dept. of General Services*, Case No 15-N-04, 62 D.C. Reg. 16505. Slip Op. 1551, pp. 1-2 (2015). A negotiability appeal and the context of the

appeal is determined by the party submitting the appeal, not the party declaring the matter nonnegotiable, *id.* PERB Rule 532.1 requires a party send a written communication declaring a proposal nonnegotiable.

Local 639 et. al. v. District of Columbia, et. al., 631 A.2d. 1205, (D.C. 1993) set out the requirements for PERB's determination of issues of negotiability. *Local 639 v. District of Columbia*, upheld PERB's opinion in *Teamsters Local 639 and 730 and D.C. Public Schools*, Case No. 90-N-01, 39 D.C. Reg. 5992, Slip Opinion No. 299 (1992), which ruled no issue of negotiability was established because management had not declared any issues non-negotiable, during negotiations. Management must establish the union was notified, under PERB rules, that a proposal was non-negotiable, *Local 639* at 631 A.2d 1205. A party may not proceed through negotiations and impasse proceedings and declare a proposal non-negotiable, after the period for asserting negotiability has lapsed, *id.* In this case, the assertion Local 872's proposal was non-negotiable, occurred after PERB declared the parties were at impasse and after mediation had been completed, J.A. 72-3. Judge Matini's decision that PERB's determination on negotiability was reasonable and consistent with the law, is erroneous. The record in this case showed the Authority did not make any declaration of negotiability, during negotiation or prior to impasse being determined

by PERB. The Executive Director's dismissal, of the impasse petition, was contrary to the law and PERB rules. Judge Matini's decision and Opinion 1811 must be reversed.

Conclusion

Local 872 respectfully requests, based upon the foregoing, the February 14, 2023 order be reversed; *Opinion* 1811 be reversed and this matter be remanded to PERB, with direction to take action to issue a decision requiring the Authority bargain over the return to work requirements and coronavirus requirements.

Respectfully,

/s/Barbara B. Hutchinson
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CERTIFICATE OF SERVICE

The foregoing Brief of Appellant and Appellant's Appendix were served upon counsel for the D.C. Public Employee Relations Board and the D.C. Water and Sewer Authority, through the court's electronic filing system, addressed to:

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This 3rd day of October 2023.

/s/Barbara B. Hutchinson
Barbara B. Hutchinson

District of Columbia Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a “CV” docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:
 - An individual’s social-security number
 - Taxpayer-identification number
 - Driver’s license or non-driver’s’ license identification card number
 - Birth date
 - The name of an individual known to be a minor
 - Financial account numbers, except that a party or nonparty making the filing may include the following:
 - (1) the acronym “SS#” where the individual’s social-security number would have been included;
 - (2) the acronym “TID#” where the individual’s taxpayer-identification number would have been included;
 - (3) the acronym “DL#” or “NDL#” where the individual’s driver’s license or non-driver’s license identification card number would have been included;
 - (4) the year of the individual’s birth;
 - (5) the minor’s initials; and
 - (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.
3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.
4. Information about protection orders, restraining orders, and injunctions that “would be likely to publicly reveal the identity or location of the protected party,” 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining “protection order” to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).
5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.
6. Any other information required by law to be kept confidential or protected from public disclosure.

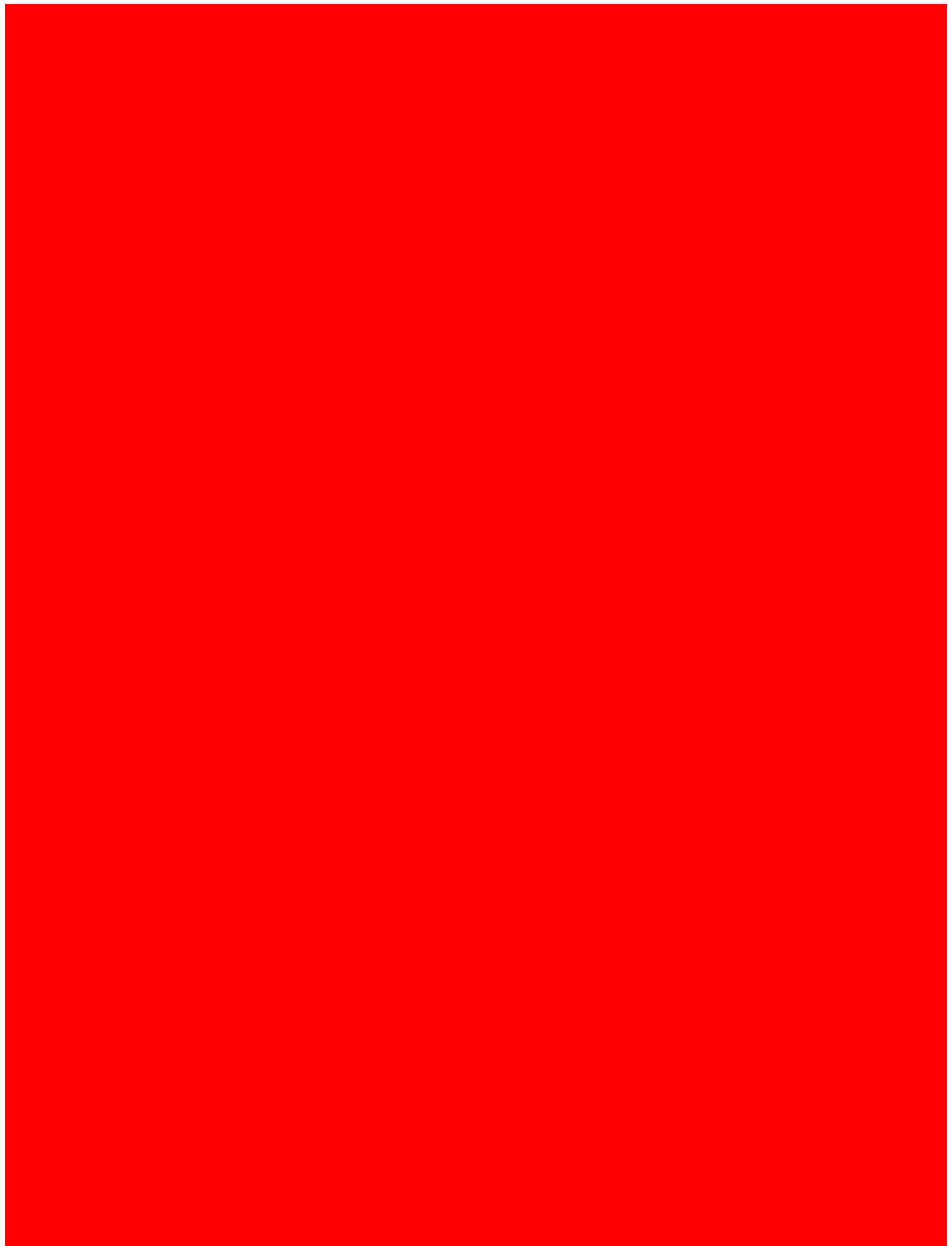
Barbara B Hutchinson
Signature

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Name

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Email Address

23-CV-185
Case Number(s)

10/03/2023
Date



ADDENDUM

Mayor's Order 2021-096

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2021-096

July 24, 2021

SUBJECT: End of Public Health Emergency and Extension of Public Emergency

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422 of the District of Columbia Home Rule Act, approved December 24, 1973, Pub. L. 93-198, 87 Stat. 790, D.C. Official Code § 1-204.22 (2016 Repl.); section 5 of the District of Columbia Public Emergency Act of 1980, effective March 5, 1981, D.C. Law 3-149, D.C. Official Code § 7-2304 (2018 Repl.); section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002, D.C. Law 14-194, D.C. Official Code § 7-2304.01 (2018 Repl.); and section 1 of An Act To Authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases, approved August 11, 1939, 53 Stat. 1408, D.C. Official Code §§ 7-131 *et seq.* (2018 Repl.); and in accordance with the Coronavirus Support Emergency Amendment Act of 2021, effective March 17, 2021, D.C. Act 24-30, the Coronavirus Public Health Extension Emergency Amendment Act of 2021, effective May 10, 2021, D.C. Act 24-79, and the Public Emergency Extension and Eviction and Utility Moratorium Phasing Emergency Amendment Act of 2021, Bill 24-345, signed by the Mayor on July 24, 2021, it is hereby **ORDERED** that:

I. BACKGROUND

1. The findings of prior Mayor's Orders relating to the COVID-19 public emergencies are hereby incorporated into this Order.
2. Almost 18 months after the World Health Organization declared a pandemic and the Secretary of the U.S. Department of Health and Human Services and the Mayor of the District of Columbia declared a public health emergency for the 2019 novel coronavirus, more than 34.3 million Americans have been diagnosed with COVID-19 and more than 610,000 have died from the disease. Locally, transmission stands at a seven-day average of 5.9 new daily cases per 100,000 persons; total infections in the District have risen to 49,930; and tragically, 1,146 District residents have lost their lives due to COVID-19.
3. The District continues to assess the prevalence and impact of new, more transmissible SARS-CoV-2 variants, such as the Delta variant, on the progress we have made through various public health measures, including the District's vaccination program.

4. The spread of COVID-19 remains a serious threat to individuals who are not vaccinated. Masks and physical distancing are still important tools for reducing risk of COVID-19 for unvaccinated persons, persons who are immunosuppressed, and persons living or working in certain settings. Residents, workers, and visitors have a personal obligation to be vaccinated as soon as possible and to abide by the District of Columbia Department of Health (DC Health) guidance on mask wearing to protect themselves and those they interact with personally and professionally.
5. COVID-19 vaccines are highly effective in real world settings, including against SARS-CoV-2 variants currently circulating in the United States and the region. To date, according to the Centers for Disease Control and Prevention (CDC), more than 70% of District residents aged 12 and older have received at least one dose of an approved vaccine; and almost 85% of District residents aged 65 and older have received at least one vaccination dose.
6. The increased vaccination of District residents, workers, and visitors; the universal access to the vaccine in the Washington, DC region; and the declining incidence of COVID-19 case rates allowed the District to ease many of the emergency restrictions put in place as a result of the public emergency and public health emergency. However, increases in case rates or hospitalizations may necessitate re-imposition of restrictions.
7. The increased vaccination rates and improving health metrics related to COVID-19 in the District warrant the end of the public health emergency as of July 25, 2021.
8. However, given the ongoing impacts of COVID-19 and the recovery efforts associated with those impacts, including efforts related to the economy, education, and public safety, it remains necessary that the District remain in a public emergency to continue to authorize government actions to modify procedures, deadlines, and standards authorized during this declared emergency and to thoughtfully and safely respond to COVID-19 and its ongoing impacts.
9. Therefore, this Mayor's Order extends the COVID-19 public emergency until October 8, 2021.

II. END OF PUBLIC HEALTH EMERGENCY

As a result of increased vaccination rates and improving health metrics related to COVID-19, the public health emergency declared by Mayor's Order 2020-046, dated March 11, 2020, and most recently extended by Mayor's Order 2021-069, dated May 17, 2021, shall terminate at 12:01 a.m. on July 25, 2021.

III. EXTENSION OF PUBLIC EMERGENCY AND CONTINUATION OF EMERGENCY MEASURES AND REQUIREMENTS UNDER PUBLIC EMERGENCY

1. The COVID-19 public emergency declared by Mayor's Order 2020-045, dated March 11, 2020, is hereby extended until October 8, 2021.
2. In accordance with Mayor's Order 2020-045, dated March 11, 2020, and its subsequent extensions, the City Administrator, in consultation with the directors of the Department of Health and the Homeland Security and Emergency Management Agency ("HSEMA"), remain authorized to implement any measures as may be necessary or appropriate to protect persons and property in the District of Columbia from the impacts of COVID-19, including the economic and other consequences of both the disease and the measures taken to stop its spread.
3. Such measures may include all actions authorized under D.C. Official Code § 7-2304(b) and other Mayor's Orders and instructions from the City Administrator's Office and emergency response team to date, including but not limited to:
 - a. Requesting federal disaster assistance, and federal relief and recovery grants and accessing all federal programs relating to the emergency;
 - b. Entering into or continuing participation in any programs, agreements, and/or contracts, including on an emergency basis, whose primary purpose is to assist in responding to the effects of COVID-19;
 - c. Exercising operational control over all District government agencies and departments;
 - d. Maintaining partial or full activation of the District's Emergency Operations Center ("EOC"), including personnel detailed to the EOC by other agencies, at the discretion of the City Administrator, in consultation with the Deputy Mayor for Public Safety and Justice and the HSEMA Director;
 - e. Maintaining, as needed, sites for isolation and quarantine and emergency programs for medically vulnerable individuals; and
 - f. Continuing to issue guidance to agencies, businesses, and organizations to aid them in maintaining safe operations.

4. Sections I-III of Mayor's Order 2020-065 mandating the use of OCTO-approved technology for virtual meetings shall remain in place, notwithstanding the end of the public health emergency.
5. Any existing delegations of emergency response measures, such as those outlined in Mayor's Order 2020-079, dated July 22, 2020, and grantmaking authority provided by Mayor's Orders 2020-094, dated September 16, 2020, and 2020-122, dated December 3, 2020, and 2021-033 and 2021-034, dated March 9, 2021, shall remain in effect unless otherwise noted herein.

IV. SUPERSESSION


This Order supersedes Mayor's Order 2021-069, dated May 17, 2021, and any other prior Mayor's Order issued during the COVID-19 public emergency and public health emergency, to the extent of any inconsistency.

V. EFFECTIVE DATE AND DURATION

This Order shall be effective on Sunday, July 25, 2021, at 12:01 a.m., unless otherwise noted herein, and shall continue to be in effect through the duration of the public emergency, or until this Order is repealed, modified, or superseded.



MURIEL BOWSER
MAYOR

ATTEST: 

KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA