IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 1590,	)	
Appellant-Below, Appellant,	)	
v.	)	C.A. No. 2020-0765-PAF
CITY OF WILMINGTON, a Delaware municipal corporation,	)	CITATION ON APPEAL FROM THE DECISION OF THE PUBLIC EMPLOYMENT RELATIONS
Appellee-Below, Appellee.	)	BOARD, DATED SEPTEMBER 1, 2020 (BIA No. 19-11-1213)

ORDER

WHEREAS[1]:

A. This case arrives on appeal from a binding interest arbitration conducted by Delaware's Public Employment Relations Board ("PERB") pursuant to the Police Officers' and Firefighters' Employment Relations Act (the "POFERA"). The dispute pertains to the imposition of a new collective bargaining agreement between the City of Wilmington (the "City") and the International

[1] The facts recited herein are taken from the record below and from the earlier decisions of the binding interest arbitrator and the Public Employment Relations Board. The appellate record will be cited as "Tab [number] at [page number]." The binding interest arbitrator's decision will be cited as "BIA Decision at [page number]." The BIA Decision is at Tab 18 of the appellate record. The PERB's decision is at Tab 28 of the appellate record.

Association of Firefighters, Local 1590 (the "IAFF").[2] The IAFF appeals the PERB's affirmance of a decision by a binding interest arbitrator to accept the City's proposal for a new collective bargaining agreement.

B. The City's Department of Fire (the "Department") employs approximately 156 unionized firefighters.[3] These employees are split between the Suppression Division, which responds to emergencies, and the Fire Prevention Division, which conducts investigations and enforces the City's fire code.[4] The IAFF is the exclusive bargaining representative for a unit of Firefighters, Lieutenants, Captains, and Battalion Chiefs in the Department.[5]

C. Firefighters in the Department's Suppression Division have traditionally worked 24-hour shifts. Under the parties' prior collective bargaining agreement, which covered the period of July 1, 2012 to June 30, 2016 (the "2016 CBA"), these firefighters were scheduled to work every fourth day, *i.e.*, one full day working followed by three full days off (a "24/72 schedule").[6] In conjunction with the 24/72 schedule's four-day cycle, the Department maintained four platoons of

[2] The City is a "public employer" with the meaning of 19 *Del. C.* § 1602(l) and the IAFF is an "employee organization" within the meaning of 19 *Del. C.* § 1602(g).

[3] BIA Decision at 3.

[4] *Id.* at 3–4.

[5] *Id.* at 1.

[6] Tab 7, Ex. 1, Art. 1; *id.* § 17.1.

firefighters, with each platoon comprising 35 firefighters.[7] The 2016 CBA required each platoon to have a minimum of 34 firefighters.[8]

D. Due to training, sick leave, vacation, or other absences, platoons frequently fell below the minimum-staffing requirement.[9] If there were five or fewer vacancies at the start of a 24-hour shift, the Department would fill the vacancies by having a firefighter work overtime.[10] If there were more than five vacancies, the Department would take an engine out of service for the shift, a practice known as "rolling bypass."[11] Rolling bypass has been the subject of much public scrutiny, due to its effect, or potential effect, on the health and safety of firefighters and residents.[12]

E. After being appointed Chief of the Department in 2017, Michael Donohue investigated alternatives to reduce or eliminate rolling bypass.[13] The City hired consultants to analyze alternative platoon and shift structures that would better

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[7] BIA Decision at 4.

[8] Tab 7, Ex.1 § 11.6. Pursuant to the parties' 2016 CBA, each on-duty piece of apparatus was to be staffed by four firefighters. The Department maintains six engines and two ladder trucks. Tab 12 at 38; Tab 8, Ex. 5 at 5. With four firefighters per apparatus, plus two battalion chiefs at the command center, minimum staffing per shift is 34 firefighters.

[9] BIA Decision at 32.

[10] *Id.* at 5.

[11] *Id*.

[12] *Id*.

[13] Tab 12 at 31, 41–42; BIA Decision at 32.

meet the minimum-staffing requirements.[14] After considering various options, Chief Donahue concluded that the Department should move from a four-platoon system to a three-platoon system.[15] To implement a three-platoon system, Chief Donahue proposed replacing the 24/72 schedule with a 24/48 schedule, whereby firefighters would work one full day followed by two full days off.[16] The plan also contemplated the addition of 17 non-work days, or "Kelly Days," to reduce annual compensable hours to approximately 2,500.[17] Chief Donahue selected the 24/48 schedule in part because it "would be the easiest shift to transition into," due to the firefighters already working 24-hour shifts.[18]

F. In January 2019, the City and the IAFF began negotiating a successor agreement to the 2016 CBA.[19] The IAFF opposed the City's proposal to implement a new 24/48 schedule with Kelly Days and, instead, favored maintaining the 24/72 schedule from the 2016 CBA. In May 2019, the parties reached an impasse and pursued mediation.[20] Three days of mediation failed to resolve the parties'

[14] BIA Decision at 32.

[15] Tab 12 at 50.

[16] *Id.* at 52; BIA Decision at 34.

[17] BIA Decision at 26.

[18] *Id.* at 34.

[19] *Id.* at 1.

[20] *See* 19 *Del. C.* § 1614(b).

disagreements, and the mediator recommended to the PERB that the parties undergo binding interest arbitration.[21]

G. Section 1615 of the POFERA establishes rules and procedures for binding interest arbitration over a collective bargaining agreement. Within seven days of receiving a recommendation to initiate binding interest arbitration, the PERB must determine (i) whether the parties have made a good faith effort to resolve their labor dispute and (ii) whether arbitration would be appropriate.[22] The PERB then appoints its Executive Director to act as the binding interest arbitrator, who must hold hearings to determine facts and render a written decision resolving the dispute.[23] The arbitrator's decision "shall be limited to a determination of which of the parties' last, best, final offers shall be accepted in its entirety."[24] The binding interest arbitrator must take into consideration seven specific factors when determining which offer to accept, in addition to "any other relevant factors."[25]

H. The PERB determined that binding interest arbitration between the City and the IAFF would be appropriate, and the PERB appointed its Executive Director

[21] *See id.* § 1615.

[22] *Id.* § 1615(a).

[23] *Id.* § 1615(b)–(d).

[24] *Id.* § 1615(d).

[25] *Id.* § 1615(d)(1)–(7).

as the arbitrator.[26] On December 11, 2019, the IAFF and the City each submitted a last, best, final offer (an "LBFO") to the Executive Director.[27] Although the parties' LBFOs identify several points of disagreement,[28] the central issue in this appeal is the parties' dispute over the platoon structure and work schedule.[29] The IAFF's LBFO sought to preserve unchanged the 2016 CBA's language pertaining to the four-platoon system and the 24/72 schedule. The City's LBFO included the following pertinent changes to the 2016 CBA:

> Amend Article 3 (Definitions) as follows:
>
> Unit – is defined as the number of hours in a shift scheduled for or worked by employees assigned to the Suppression Division of the Fire Department (i.e., 8-10-12 hours). ~~twelve (12) hours: 0800 – 2000 or 2000 – 0800~~

[26] *See id.* § 1615(b) ("[The PERB] shall appoint the Executive Director or his/her designee to act as binding interest arbitrator.").

[27] BIA Decision at 2.

[28] *Id.* at 5–13.

[29] *Id.* at 32. In their briefing, the parties describe a non-binding advisory Declaratory Statement issued by the PERB on October 9, 2019, captioned *City of Wilmington & IAFF Local 1590*, D.S. 19-06-1191, IX PERB 8147 (the "Declaratory Statement"). The Declaratory Statement concerns the scope of mandatory bargaining. Both parties argue that the Declaratory Statement should have no effect on this appeal. *See* Opening Br. 22 (arguing that the Declaratory Statement should be afforded "no weight"); Answering Br. 34 ("the holding in the Declaratory Statement has no bearing on the binding interest arbitration or this appeal"); *id.* 37 (arguing that "classification of platoon and shift structure as mandatory or permissive subjects of bargaining" is irrelevant and that the Declaratory Statement is neither "dispositive of this matter" nor "part of the record on appeal"). Because the parties have cited and quoted the Declaratory Statement, I have reviewed the Declaratory Statement. I agree with the parties that it does not affect the outcome of this Order.

Tour – is defined as consecutive Units immediately before scheduled hours or days off under a work schedule as established by the Chief of Fire. ~~twenty-four (24) hours: 0800 – 0800~~

Complete Tour of Duty – is defined as consecutive Units immediately followed by scheduled hours or days off under a work schedule as established by the Chief of Fire. ~~twenty four (24) hours on duty immediately followed by seventy-two (72) hours off~~

Hourly Rate – is defined as the hourly compensation calculated on an annual base salary divided by ~~2080~~ 2496 hours per year (Annual Base Salary ÷ ~~2080~~ 2496).

. . .

Amend Article [17 (Hours of Work)] to read as follows:

. . .

Effective 7/1/20, all Fire Suppression members of the Fire Department shall work a three (3) ~~four (4)~~ platoon system and a shift as determined and established by the Chief of Fire. ~~as follows:~~

~~One twenty four (24) hour period 0800 – 0800 hours followed by seventy-two (72) hours off (24/72 Work Schedule).~~

~~The term "A Complete Tour of Duty" in this subsection is defined as twenty-four (24) hours on, followed by seventy-two (72) hours off.~~

Effective upon the implementation of a three (3) platoon system, additional hours off ("Kelly Days") shall be scheduled to reduce the annual hours to 2496. As an example, if the Chief of Fire were to implement a three platoon system with a Complete Tour of Duty of (24) hours on, followed by forty-eight (48) hours off, then each employee would be scheduled for an additional twenty-four (24) hours off as a Kelly Day every seventh (7th) shift.

> The platoon system for fire suppression members described above and any shift schedule may be changed at the discretion of the Chief of Fire.[30]

I. On May 27, 2020, following a two-day evidentiary hearing, the Executive Director issued her decision (the "BIA Decision").[31] Among other things, the BIA Decision outlined the alternative work schedules and analyzed each alternative's anticipated effect on the Department's ability to meet the minimum-staffing requirements in order to avoid overtime or rolling bypass.[32] Based on this analysis, the BIA Decision found that "[t]he need for rolling bypass is essentially eliminated and the need for overtime greatly reduced by redeploying the available 142 firefighters to a 3 platoon, 24-48 schedule."[33] By contrast, the IAFF "did not establish that its proposal to maintain the [24/72], four platoon system reasonably addresses the parties[']shared goal of essentially eliminating rolling bypass."[34] The Executive Director concluded that the City's LBFO was more reasonable than the

[30] Tab 4 at 1, 10.

[31] The record consisted of 75 exhibits submitted by the parties and testimony from nine witnesses. BIA Decision at 3.

[32] *Id.* at 32

[33] *Id.* at 37.

[34] *Id.* at 36.

IAFF's LBFO.[35] The Executive Director ordered the parties to implement the City's final offer into their new collective bargaining agreement.[36]

J. The IAFF appealed the BIA Decision to the PERB. On appeal, the IAFF argued that the BIA Decision "does not meet the requirements of 19 *Del. C.* § 1615(d)" because it "add[s] terms to the City's final offer that are not part of the offer."[37] The IAFF objected on the basis that the City's proposal gave the Chief of Fire extensive discretion to set platoon and shift structures.

K. The PERB issued its decision affirming the BIA Decision on September 2, 2020.[38] The PERB reviewed the Executive Director's determination for whether it was "arbitrary, capricious, unsupported by the facts in the record, or contrary to law."[39] The PERB noted that "[t]he arbitrator's decision references and reviews extensive evidence proffered by the City to support its choice of the 24/48 schedule from among many options."[40] The PERB agreed with the Executive Director that the City had the authority to establish a platoon and shift structure and that a 24/48 schedule was more effective than a 24/72 schedule at reducing overtime and rolling

[35] *Id.* at 51.

[36] *Id.* at 52.

[37] Tab 28 at 4.

[38] Tab 28.

[39] *Id.* at 3.

[40] *Id.* at 5.

bypass.[41] Like the Executive Director, the PERB concluded that the City's LBFO was the more reasonable proposal, and the PERB ordered the City's LBFO to be implemented into the parties' new collective bargaining agreement.[42]

L. On September 8, 2020, the IAFF filed a notice of appeal in this Court pursuant to 19 *Del. C.* § 1609(a), appealing the PERB's affirmance of the BIA Decision.[43] The Court received briefing and held oral argument on March 9, 2021.

NOW, THEREFORE, the Court having considered the parties' submissions and heard oral argument, IT IS HEREBY ORDERED, this 28th day of June, 2021, as follows:

1. "On appeal of an administrative agency's adjudication, this Court's sole function is to determine whether the Board's decision is supported by substantial evidence and is free from legal error." *Angstadt v. Red Clay Consol. Sch. Dist.*, 4 A.3d 382, 387 (Del. 2010). "The Court is bound to accept as correct all relevant factual findings that are supported in the record by substantial evidence, which means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *City of Wilmington v. Fraternal Order of Police Lodge 1*,

[41] *Id.* at 6.

[42] *Id.* at 7.

[43] Dkt. 1; *see* 19 *Del. C.* § 1609(a) ("Any person or party adversely affected by a decision of the Board under § 1608 or § 1615 of this title may appeal that decision to the Chancery Court of this State.").

2016 WL 4059237, at *4 (Del. Ch. July 29, 2016) (internal quotations omitted). "The issues presented on this appeal that are purely legal, however, are subject to this Court's *de novo* review." *Fraternal Order of Police, Lodge 5 v. New Castle Cty.*, 2014 WL 351009, at *4 (Del. Ch. Jan. 29, 2014). "The proper construction of a contract, such as a collective bargaining agreement, is a question of law for the Court." *Khan v. Delaware State Univ.*, 2017 WL 815257, at *3 (Del. Super. Ct. Feb. 28, 2017). Additionally, although the Court "accords due weight to PERB's expertise and specialized competence in labor law," the Court must still "conduct a plenary review of a PERB decision when the issue is the proper construction of statutory law and its application to undisputed facts." *Fraternal Order of Police Lodge 1*, 2016 WL 4059237, at *4.

2. "Delaware courts do not accord agency interpretations of the statutes which they administer so-called *Chevron* deference, as do federal courts in reviewing administrative decisions under the federal Administrative Procedures Act." *Fraternal Order of Police, Lodge 5*, 2014 WL 351009, at *4 (footnotes omitted).[44] "In interpreting a statute, Delaware courts must ascertain and give effect to the intent of the legislature. If the statute is found to be clear and unambiguous,

[44] In *Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the U.S. Supreme Court held that an agency's interpretation of a statute that it administers is entitled to deference so long as (1) Congress has not spoken directly on the issue and (2) the agency's interpretation is reasonable. *Id.* at 842–43.

then the plain meaning of the statutory language controls." *Id.* (internal quotations omitted).

3. Section 1615(d) of the POFERA requires the binding interest arbitrator to determine "which of the parties' last, best, final offers shall be accepted in its entirety." When making this determination, the arbitrator must take into consideration seven non-exclusive statutory factors. These factors include:

> (1) The interests and welfare of the public.
>
> (2) Comparison of the wages, salaries, benefits, hours and conditions of employment of the employees involved in the binding interest arbitration proceedings with the wages, salaries, benefits, hours and conditions of employment of other employees performing the same or similar services or requiring similar skills under similar working conditions in the same community and in comparable communities and with other employees generally in the same community and in comparable communities.
>
> (3) The overall compensation presently received by the employees inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
>
> (4) Stipulations of the parties.
>
> (5) The lawful authority of the public employer.
>
> (6) The financial ability of the public employer, based on existing revenues, to meet the costs of any proposed settlements; provided that any enhancement to such financial ability derived from savings experienced by such public employer as a result of a strike shall not be considered by the binding interest arbitrator.
>
> (7) Such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective

> bargaining, mediation, binding interest arbitration or otherwise between parties, in the public service or in private employment.

19 *Del. C.* § 1615(d). The binding interest arbitrator must "give due weight to each relevant factor" and "make written findings of facts and a decision for the resolution of the dispute," which must "specify the basis for the binding interest arbitrator's findings." 19 *Del. C.* § 1615(d).

4. To perform the required analysis on each party's LBFO, the Executive Director construed the City's LBFO as implementing a three-platoon, 24/48 schedule: "In this case, the City submitted proposals in its last, best, final offer which *specifically provide* [that] the existing four platoon, 24-72 schedule will be replaced with three platoons which will work a 24-48 schedule and includes 17.3 Kelly days annually. Because the City has chosen to submit this proposal . . . , it will be considered on its comparable merits under the statutory framework of 19 *Del. C.* § 1615(d), as will the IAFF's corollary proposal to maintain the current shift and platoon structure." BIA Decision at 26–27 (emphasis added).

5. After determining the parties' proposals to be compared, the Executive Director performed a statutory analysis based on the factors set forth in 19 *Del. C.* § 1615(d). The Executive Director determined that the City had lawful authority to establish platoon and shift structures. BIA Decision at 26–27, 29. The Executive Director determined that the City's financial ability to meet the cost of either proposal was not a factor, based on the City's cost projections. *Id.* at 29. The City's

cost projections for its own proposal were based on a 24/48 schedule. Tab 8, Ex. 6. The Executive Director determined that the compensation and benefits of the Department compared favorably with those of the fire departments in Reading, Pennsylvania and Vineland, New Jersey, which are within Wilmington's metropolitan statistical area and are of a similar size. BIA Decision at 29–31. In making that determination, the Executive Director relied upon the City's consultant's report, which calculated compensation according to the City's LBFO, including the increase of annual hours to 2,496. Tab 8, Ex. 30 at 7.

6. With respect to hours of work, the Executive Director considered the parties' "share[d] interest and goal of decreasing the use of rolling bypass." BIA Decision at 32. The Executive Director cited the Chief's testimony that the four-platoon, 24/72 shift structure "did not provide adequate manpower to fully staff the City's firefighting apparatus without incurring large amounts of overtime expense and/or using rolling bypass." *Id.* The BIA Decision also presented a table compiled by the City's consultants, which compared different shift structures and their impacts on staffing. *Id.* at 32–33. The Executive Director quoted the Chief's testimony that he believed the three-platoon, 24/48 shift would be the best option to reduce rolling bypass. In the Chief's words: "I just felt like the 24-48 would be the easiest shift to transition into. We were already working the 24's." *Id.* at 34. The BIA Decision also presented a second table, which highlighted the frequency at which overtime

and rolling bypass would be needed to meet the minimum-staffing requirements under a 24/48 schedule versus a 24/72 schedule. *Id.* The Executive Director found that the IAFF had not sufficiently supported its position that fewer days of rest between shifts under a 24/48 schedule would increase fatigue-induced injuries. *Id.* at 36. The Executive Director concluded that "[t]he need for rolling bypass is essentially eliminated and the need for overtime greatly reduced by redeploying the available 142 firefighters to a 3 platoon, 24-48 schedule." *Id.* at 37. By contrast, the Executive Director held that the IAFF "did not establish that its proposal to maintain the [24/72], four platoon system reasonably addresses the parties[']shared goal of essentially eliminating rolling bypass." *Id.* at 36. In light of this analysis, the Executive Director determined that a 24/48 schedule was preferrable to the existing 24/72 schedule. The Executive Director ultimately accepted the City's LBFO.

7. The City's LBFO, however, did not establish a 24/48 schedule. Although the BIA Decision states that the City's proposal "specifically" called for a 24/48 schedule to replace the 24/72 schedule, the plain language of the City's LBFO does not support that construction. The City's LBFO struck the language from the 2016 CBA that outlined a 24/72 schedule, but did not replace it with analogous language providing a 24/48 schedule. Tab 4 at 1, 10. Instead, the City's LBFO provided that firefighters would work a shift of an unspecified length "as determined and established by the Chief of Fire," followed by an undetermined amount of time

off "under a work schedule as established by the Chief of Fire." *Id.* To be sure, the City's LBFO stated, "[a]s an example," that the Chief of Fire could "implement a three[-]platoon system with a Complete Tour of Duty of [24] hours on, followed by [48] hours off." *Id.* at 10. But that schedule is expressly identified only as "an example," and the City's LBFO does not bind the Chief of Fire to any particular work schedule, even from the outset of the new system's implementation. *Id.* The City's proposal intentionally did not limit the Chief to implementing a 24/48 schedule. As the City's counsel explained at oral argument:

> [T]he language of the LBFO was not drafted to limit the City to a 24/48 three-platoon structure because there is discretion given to the chief of fire. And drafting definitions for tour of duty and complete tour of duty that reflect the 24/48 schedule would make it functionally difficult, if not impossible, to make a change to platoon structure that then did not, you know, place us in violation of the language that was in the contract, because it would bind us to a 24/48 structure without that.

Oral Arg. Tr. 47–48.

8. The Executive Director acknowledged the IAFF's "legitimate concern" that the express language of the City's LBFO provided broad discretion to change the platoon and shift structure at his discretion. BIA Decision at 38. Still, the Executive Director treated the language as proposing a 24/48 schedule based on the record submitted to her: "There is no question, based on this record, the City proposes to move to a three platoon system and implement a 24-48 schedule on July

1, 2020. This change is the essence of [the] City's last, best, final offer." BIA Decision at 38.[45]

9. The Executive Director erred by performing her statutory analysis only on the unwritten "essence" of the City's LBFO. The POFERA makes clear that the plain language of a collective bargaining agreement is meaningful. The purpose of the POFERA is "to promote harmonious and cooperative relationships between public employers and their employees, employed as police officers and firefighters, and to protect the public by assuring the orderly and uninterrupted operations and functions of public safety services." 19 *Del. C.* § 1601. To achieve this objective, the POFERA "[o]bligat[es] public employers and organizations of police officers and firefighters . . . to enter into collective bargaining negotiations with the

[45] To address the IAFF's concerns that the City's proposal would allow the Chief of Fire to unilaterally modify the firefighters' hours of work, the Executive Director stated:

> The City should be mindful, however, that it has a continuing obligation to negotiate concerning terms and conditions of employment, which includes hours and working conditions. To the extent the Chief should decide to exercise his discretion to unilaterally change the platoon or shift structure during the term of this agreement, the City may find itself in violation of its statutory obligations if it does not negotiate the impact of such change on the terms and conditions of employment of bargaining unit members with the IAFF.

The Executive Director thus recognized the inherent problem arising from the City's choice to delete the terms establishing the firefighters' hours and work schedules from the 2016 CBA and replace them with fully discretionary language in its LBFO. For the reasons discussed in this Order, however, the Executive Director's attempt to craft a solution, though commendable, cannot serve as a lawful substitute for the analysis mandated by 19 *Del. C.* § 1615(d).

willingness to resolve disputes relating to terms and conditions of employment and *to reduce to writing* any agreements reached through such negotiations." *Id.* (emphasis added). Similarly, the POFERA's definition of "collective bargaining" includes the performance of the parties' obligation "to execute a written contract incorporating any agreements reached." *Id.* § 1602(e).[46] These provisions of the POFERA emphasize the importance of the express, written terms of the collective bargaining agreement.

10. The POFERA requires a binding interest arbitrator's determination to be grounded in the actual terms of an LBFO. When a binding interest arbitrator decides a resolution of the parties' collective bargaining dispute, "the decision shall be limited to a determination of which of the parties' last, best, final offers shall be accepted in its entirety." 19 *Del. C.* §1615(d). This provision does not allow the arbitrator to "pick and choose between provisions of the two LBFOs, or create terms of her own." *City of Wilmington v. Fraternal Order of Police Lodge 1*, 2015 WL 4035616, at *3 (Del. Ch. June 30, 2015). The Executive Director was not permitted to modify the City's LBFO or add terms based on the work schedule that the City's consultants researched or that the City represented that it would implement, because that was not the work schedule reduced to writing in the City's LBFO. Nor could

[46] *See also* 19 *Del. C.* § 1607 (making it an unfair labor practice for either party to refuse to reduce to writing a collective bargaining agreement).

the Executive Director comply with the POFERA by assessing the costs and benefits of the City's LBFO based on a non-binding illustrative application.

11. In sum, 19 *Del. C.* § 1615(d) required the Executive Director to apply the statutory factors of the POFERA and to analyze the City's LBFO in accordance with its express terms. The City's LBFO provided for a "platoon system" and "any shift schedule" that could be freely established and changed at the Chief of Fire's sole discretion. The Executive Director instead performed the statutory analysis on a three-platoon, 24/48 schedule in contravention of the terms of the POFERA. The PERB's affirmance of the BIA Decision therefore constituted an error as a matter of law.

12. For the foregoing reasons, the PERB's decision affirming the BIA Decision is hereby reversed.[47] The parties' dispute is remanded to the PERB for further proceedings consistent with this Order.[48]

/s/ Paul A. Fioravanti, Jr.
Vice Chancellor

[47] Having concluded that the PERB's affirmance must be reversed, I need not reach IAFF's argument that the Executive Director erred in selecting the City's LBFO because the proposed definition of "Hourly Rate" was unreasonable. *See* Opening Br. 31–32.

[48] For the avoidance of doubt, this Order shall not be construed to limit the ability of the parties, the binding interest arbitrator, or the PERB on remand to engage in further proceedings in conformity with the POFERA and Delaware law.