UFADBA, 15 OCB2d 26 (BCB 2022)

(IP) (Docket No. BCB-4372-20)

Summary of Decision: In *UFADBA*, 13 OCB2d 15 (BCB 2020), the Board ordered the FDNY to make whole the three most senior Chief Dispatchers for any financial loss resulting from its unilateral rescission of the use of City-owned vehicles for commuting. Here, at the request of the parties, the Board determined issues relating to the make whole remedy. Specifically, the Board ordered the FDNY to make whole all employees serving in the three most senior Chief Dispatcher positions. It determined that the backpay period commenced on the date the City-owned vehicles were returned to the FDNY and continues until such time as an agreement is reached or impasse procedures are exhausted. It also determined an appropriate backpay formula to make all affected Chief Dispatchers whole for the loss of the use of City-owned vehicles. ***(Official decision follows.)***

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Petition

-between-

UNIFORMED FIRE ALARM DISPATCHERS BENEVOLENT ASSOCIATION,

Petitioner,

-and-

THE FIRE DEPARTMENT OF THE CITY OF NEW YORK and THE CITY OF NEW YORK,

Respondents.

DECISION AND ORDER

In *UFADBA*, 13 OCB2d 15 (BCB 2020) ("Decision"), the Board found that the Fire Department of the City of New York ("FDNY") and the City of New York ("City") made a unilateral change to a mandatory subject of bargaining, in violation of § 12-306(a)(1) and (4) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12,

Chapter 3) ("NYCCBL"), by failing to bargain over the rescission of City-owned vehicles for use by the three most senior Supervising Fire Alarm Dispatchers Level II ("Chief Dispatchers") to commute to and from work and ordered, among other things, that the FDNY "make the three most senior Chief Dispatchers whole for any financial loss resulting from its improper unilateral change."[1] *Decision* at 13.

The parties disagreed over how to implement the Decision's make-whole remedy, including who is entitled to be made whole by the Board's Order, what time period it covers, and how backpay is calculated. They requested that the Board issue a supplemental ruling addressing the issues. The Union argues that any bargaining unit member serving in the three most senior Chief Dispatcher positions who would have received a vehicle but for the unilateral change should be made whole; that the backpay period should run from the date the vehicles were confiscated in November 2019 until the parties reach agreement on the issue or exhaust impasse procedures; and that the value of the lost economic benefit should be calculated by using the IRS Standard Mileage Rate plus tolls, if any. The City asserted that only the three most senior Chief Dispatchers who had to return their City-owned vehicles in November 2019 should be made whole; that the backpay period should run from November 2019 to the date of the Board's Decision, August 3, 2020; and that the lost economic benefit should be valued at $660 per year, which is the annual taxable fringe benefit value associated with the use of the vehicles. The Board orders the FDNY to make whole all employees serving in the three most senior Chief Dispatcher positions. The Board finds that the backpay period commenced on the date the City-owned vehicles were returned to the FDNY

[1] As noted in the Decision, the Union is the certified collective bargaining representative for FDNY employees in the Supervising Fire Alarm Dispatcher ("SFAD") title, which consists of two levels. The employees in the SFAD Level II title have the in-house position of Chief Dispatcher. When the Decision was issued, there were about ten Chief Dispatchers.

and continues until such time as an agreement is reached or impasse procedures are exhausted and orders a backpay formula to make all affected Chief Dispatchers whole for the loss of the use of City-owned vehicles.

BACKGROUND[2]

Beginning in 2014, the FDNY continuously provided each of the three most senior Chief Dispatchers with a take-home vehicle for the purpose of commuting to and from work. The use of a take-home vehicle was considered a fringe benefit for tax purposes.

In 2019, the Mayor issued Executive Order No. 41, which called for the reduction of at least 500 take-home vehicles amongst City agencies and stated that "[t]he costs and emissions tied to commuting use shall be minimized to operationally essential and non-avoidable purposes." *Decision* at 3-4. As a result, the FDNY was ordered to reduce its fleet by 110 vehicles. On November 1, 2019, the three most senior Chief Dispatchers were notified that they were required to return their take-home vehicles. They did so on either November 6 or 20, 2019.

The Decision was based on the Union's claim that the FDNY violated NYCCBL § 12-306(a)(1) and (4) when it unilaterally discontinued its practice of allowing the three most senior Chief Dispatchers to use a City-owned vehicle for commuting to and from work. The Board agreed, concluding "that authorizing the use of agency vehicles for the purpose of commuting is an economic benefit and that the failure to bargain with the Union over the rescission of the vehicles was an improper practice." *Decision* at 2. The Board ordered, in relevant part, that the FDNY "negotiate over the use of City-owned vehicles by the three most senior Chief Dispatchers

[2] The facts are fully set forth in the Decision and are repeated here only as necessary. *See Decision*.

for commuting to and from work." *Id.* at 13. The Board did not order that the vehicles be returned to the three most senior Chief Dispatchers, noting "that under the circumstances present here, where the vehicles used by the three Senior Chief Dispatchers may have been eliminated from the FDNY's fleet, nothing in our Order requires the FDNY to increase the size of its fleet." *Id.* at 12 n.8. However, the Order did require the FDNY to "make the three most senior Chief Dispatchers whole for any financial loss resulting from its improper unilateral change." *Id.* at 13.

After efforts to agree upon the make-whole remedy were unsuccessful, the parties requested that the Board determine: "who is entitled to be made whole;" "what period does the make-whole remedy cover;" and "how [ ] the make whole figure [should] be calculated (including the rate to be used to calculate the costs incurred by senior Chief Dispatchers commuting to and from work)." *See* Trial Examiner email dated January 31, 2022. Thereafter, the parties submitted written briefs in support of their positions.

POSITIONS OF THE PARTIES

Union's Position

The Union contends that remedial orders are designed to place an employee in the position in which they would have been had the improper practice not taken place. Accordingly, the Union asserts that the Board's make whole remedy should cover the period of time from when the vehicles were removed in November 2019, until the parties negotiate to completion. It contends that if the FDNY had been ordered to return the vehicles, the three most senior Chief Dispatchers would continue to have the use of those vehicles, an economic benefit, until the parties negotiated otherwise. The Union argues that ordering an end date to the benefit prior to the satisfaction of

the City's obligation to bargain would be akin to permitting a unilateral removal of the economic benefit without bargaining.

Moreover, the Union contends that, absent the unilateral removal of the vehicles, the benefit would have continued for the three most senior Chief Dispatchers and whoever succeeds them until the parties negotiated otherwise. It asserts that had the vehicles been restored, the three most senior Chief Dispatchers would continue to enjoy this benefit regardless of which individuals hold the three most senior Chief Dispatcher positions. The Union contends that if the remedy only applies to the three Chief Dispatchers who returned their vehicles in November of 2019, then the Board's Order would not restore the full value of the benefit to the bargaining unit. Rather, it would allow the eventual discontinuation of a benefit, a result that the parties have not agreed to in negotiations. This outcome would effectively nullify the unilateral change that the Board found violated the NYCCBL in the Decision.

Finally, the Union asserts that, absent the return of the vehicles, the value of the remedy should be calculated using the IRS Standard Mileage Rate, plus tolls, if any.[3] It asserts that the IRS Rate accounts for the costs of commuting by car: from oil changes and repairs to purchasing gas. Additionally, the Union asserts that while it is not aware that the three most senior Chief Dispatchers incurred any expense for tolls while using a City-owned vehicle, it was also not aware of any obligation to reimburse the City.

[3] The IRS Standard Mileage Rate is normally modified annually, but there was a midyear increase in 2022. As of July 1, 2022, that rate is 62.5 cents per mile. *See* *https://www.irs.gov/newsroom/irs-increases-mileage-rate-for-remainder-of-2022* (last visited on July 11, 2022). The IRS "optional standard mileage rate . . . is based on an annual study of the fixed and variable costs of operating an automobile." *See* *https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2022* (last visited on July 11, 2022).

City's Position

The City asserts that "the obvious remedy would have been to simply return the vehicles to the three most senior Chief Dispatchers for their continued use to commute to and from work. However, as this option was not available due to the City's fleet reduction, a monetary remedy needed to be fashioned to make the named three most senior Chief Dispatchers whole for their financial loss." (City Br., at 2)

Regarding the backpay period, the City contends that it should only cover the period of time from the date the vehicles were returned in November 2019, to August 3, 2020, the date of the Board's Decision. It alleges that the Board fashioned two "distinct orders," one that directs the City to make whole the three most senior Chief Dispatchers who were ordered to return vehicles and the other ordering the parties to negotiate; thus the make whole order covers the financial losses up until the date of the Decision, and the order to negotiate is intended prospectively. (City Br., at 3) It argues that otherwise, the Board would not have ordered a make-whole remedy. According to the City, "[e]xtending the make-whole remedy beyond the date of the decision would essentially hold this benefit out in perpetuity defeating the order to negotiate because the Union could simply drag on negotiations and never agree that an impasse has been reached." (City Br., at 3)

In the event the Board orders that the backpay period goes beyond the date of the Decision, the City asserts it should not go past July 31, 2021, the date the parties' collective bargaining agreement ended. It asserts that since the vehicles were deemed an economic benefit, the benefit should be bargained with the other economic benefits during negotiations.

Moreover, the City asserts that only the three most senior Chief Dispatchers whose vehicles were revoked are entitled to be made whole as they were the only employees who had enjoyed this

benefit and thus the only employees who suffered a financial loss.[4] The City argues that Chief Dispatchers, other than those three who were assigned cars in 2019, are not entitled to a backpay remedy because they never suffered a financial loss. Additionally, the City re-emphasizes that providing a remedy to anyone besides those three specific individuals would fall under the prospective portion of the Board's Order and should be bargained.

The City asserts that the lost economic benefit should be valued at $660 per year, which is the value of the use of a FDNY vehicle that the City calculated and instructed employees to report as income on their annual tax returns.[5] It asserts that the financial loss incurred by the Chief Dispatchers cannot exceed the annual taxable fringe benefit amount because anything more than that would in essence be increasing their income without bargaining.

Should the Board find the appropriate remedy is based on a per mile calculation, the City contends that the IRS Standard Mileage Rate is not appropriate here as the three most senior Chief Dispatchers already own and operate their own vehicles and are already paying for maintenance and other operating costs included in the IRS Standard Mileage Rate, regardless of whether they used the City-owned vehicles for commuting. Instead, the City asserts that the Board should use the mileage reimbursement rate set forth in the parties' collective bargaining agreement, which

[4] The City also contends that the facts that were presented to the Board in the underlying matter involved three specific Chief Dispatchers; therefore, only those three Chief Dispatchers should be entitled to be made whole.

[5] According to the City, the taxable fringe benefit amount is determined by using the IRS commuting rule. Under IRS policy, an employer may choose one of three methods to value a commuting benefit, one of which is the commuting rule. The FDNY uses this calculation method. The IRS commuting rule values each trip at $1.50, a roundtrip being $3.00, and the FDNY bases its calculations off of 220 days worked, which equates to $660.

covers commuting to and from work when authorized.[6] The City also notes that if a per mile calculation is used, it should be based on the shortest practicable route from the Chief Dispatcher's home to their assigned work location and the number of tours actually worked.

Finally, the City does not dispute that prior to the removal of vehicles from the three most senior Chief Dispatchers, those employees did not incur tolls within City limits. It maintains that the MTA does not charge NYC agencies for tolls within the five boroughs. However, if tolls are incurred for travel outside the five boroughs, the City Vehicle Driver Handbook requires employees to reimburse the City.

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[6] Article X of the Fire Alarm Dispatchers collective bargaining agreement, entitled "Car Allowances," states:

> Employees who are receiving a per diem allowance in lieu of a mileage allowance for authorized and actual use of their own cars may elect reimbursement on a standard mileage basis. Such election shall be irrevocable.
>
> Effective as of the dates set forth below, compensation to employees for authorized and required use of their own cars shall be at the indicated rate. There shall be a minimum guarantee of thirty (30) miles for each day of authorized and actual use. Said mileage allowance is not to include payment for the distance traveled from the employee's home to the first work location in a given day or from the last work location to the employee's home unless the employee is authorized and required to carry special equipment or materials which cannot feasibly be transported via mass transit.
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> Effective November 26, 1999 28 ¢ per mile

(City Br., Ex. A, at 24)

DISCUSSION

NYCCBL § 12-309(a)(4) entrusts the Board with determining and issuing a proper remedial order for an improper practice.[7] "In exercising that authority, we are to use our expertise, guided by our understanding of the concrete realities of relations between the parties, which is why '[r]emedies for improper employer practices are peculiarly within the administrative competence' of PERB or of the Board." *UFT*, 5 OCB2d 26, at 10-11 (BCB 2012) (quoting *Matter of Buffalo Police Benevolent Assn. v. N.Y. State Pub. Empl. Rel. Bd.*, 8 A.D.3d 958, 959 (4th Dept. 2004) (citing *Matter of City of Albany v. Helsby*, 29 N.Y.2d 433, 439 (1972))); *see also Matter of Civ. Serv. Empl. Union v. Pub. Empl. Rel. Bd.*, 180 Misc.2d 869, 871 (Sup. Ct. Alb. Co. 1999); *Matter of Civ. Serv. Empl. Union v. N.Y. State Pub. Empl. Rel. Bd.*, 2 A.D.3d 1197, 1199 (3rd Dept. 2003). Furthermore, [an adjudicative body] "has considerable discretion in selecting a method reasonably designed to approximate the amount of pay [to which] a wrong[ed] employee" is entitled. *UFT*, 5 OCB2d 26, at 11 (quoting *N.L.R.B. v. Velocity Exp., Inc.*, 434 F.3d 1198, at *1202 (10th Cir. 2006) (citing *Angle v. NLRB*, 683 F.2d 1296, 1302 (10th Cir. 1982))).

The Board's Order directed two distinct remedies based on its conclusion that an employer cannot make a unilateral change to an economic benefit without bargaining in good faith. The first

[7] NYCCBL § 12-309(a) states in pertinent part:

> The board of collective bargaining, in addition to such other powers and duties as it has under this chapter and as may be conferred upon it from time to time by law, shall have the power and duty: . . . .
>
> (4) to prevent and remedy improper public employer and public employee organization practices, as such practices are listed in section 12-306 of this chapter. For such purposes, the board of collective bargaining is empowered to establish procedures, make final determinations, and issue appropriate remedial orders.

ordered the FDNY to bargain in good faith over the recission of the benefit. The second ordered it to "make the three most senior Chief Dispatchers whole for any financial loss resulting from its improper unilateral change." *Decision* at 13. This remedy is consistent with our prior orders involving unilateral changes to a mandatory subject of bargaining. We have held that an appropriate remedy for such violations is the restoration of the *status quo* until the parties have bargained otherwise. *See DC 37, Locals 461 & 508*, 8 OCB2d 11 (BCB 2015) (ordering the City to negotiate with the union regarding the unilateral change and to make whole all affected employees for losses they incurred from the date the benefit was eliminated until it is restored).

Here, the issue the parties bring to the Board is limited to the make whole portion of the remedy. In prior instances, our order for restoration of the *status quo* was to reinstate the benefit that had been removed or changed. In *CEU, L. 237*, 13 OCB2d 17 (BCB 2020), the Board found that NYCHA made a unilateral change to a past practice by not providing at least two hours of excused time in December 2019 to full-time employees. The Board ordered NYCHA to make whole unit members who were not given the two hours and to cease and desist from implementing any changes to the provision of two hours of excused leave until such time as the parties negotiate either to agreement or to impasse with respect to such changes. *See CEU, L. 237*, 13 OCB2d 17 at 10. Similarly, in *Local 621, SEIU*, 2 OCB2d 27 (BCB 2009), the Board ordered the City to restore possession of City-owned vehicles to employees for commuting to and from work. In *UFA*, 10 OCB2d 5 (BCB 2017), the Board ordered the City to reinstate the *status quo* regarding the method of calculating the value of a day's pay for disciplinary fines, to cease and desist from

changing the method until the parties bargain over any such changes, and to make whole any employees affected by the change.[8]

However, because the FDNY asserted that the vehicles at issue were no longer in the FDNY's fleet, the Decision did not require the City to return the vehicles but instead ordered it to "make the three most senior Chief Dispatchers whole for any financial loss resulting from its improper unilateral change." *Decision* at 13; *see also Town of Islip v. New York State Pub. Employment Relations Bd.*, 23 N.Y.3d 482, 494 (2014) (holding PERB reasonably determined "that the Town engaged in an improper practice when it unilaterally discontinued the permanent assignment of 'take home' vehicles," but remanding to PERB to "fashion a remedy that grants commensurate, practical relief to the employees . . .without requiring the Town to purchase a whole new fleet of vehicles with an uncertain future"). Nevertheless, the remedy ordered in the Decision was intended to restore the *status quo*, albeit without returning the vehicles. To the extent this was not clear, we clarify our ruling here.

Our authority to determine a remedy is articulated in CSL § 205(5)(d), which provides that remedies in improper practice cases may include "make whole" relief, including but not limited to an award of "back pay." *See UFT*, 5 OCB2d 26, at 11. Here, the economic benefit of using a City-owned vehicle to commute to and from work was unilaterally rescinded in November 2019 and to our knowledge will not be restored. Thus, the restoration of the *status quo* begins on the date the vehicles were returned in November 2019. In addition, effective restoration of the lost

[8] PERB has similarly addressed the unilateral withdrawal of the use of an employer-owned vehicle on numerous occasions, consistently ordering employers to restore the use of the vehicles; make whole the aggrieved employees; and cease and desist from unilaterally rescinding the past practice. *See, e.g., County of Nassau*, 38 PERB ¶ 3005 (2005); *County of Nassau*, 35 PERB ¶ 3036 (2002); *County of Nassau*, 26 PERB ¶ 3040 (1993), *affd., County of Nassau v. New York State Pub. Empl. Rel. Bd.*, 215 A.D.2d 381 (2d Dept. 1995), *lv denied*, 86 N.Y.2d 706 (1995).

benefit must continue until the parties negotiate a resolution or exhaust the statutory impasse procedures. Requiring the FDNY to provide a benefit, in lieu of the vehicles, unless or until the parties determine otherwise effectively places the three most senior Chief Dispatchers in the same position that the parties would have been in had the FDNY never unilaterally rescinded the vehicles. Accordingly, we find that the period of time that the FDNY must compensate the three most senior Chief Dispatchers for the financial loss of use of City-owned vehicles for commuting to and from work is from the date the vehicles were returned until the parties negotiate a different resolution or exhaust the statutory impasse procedures ("backpay period").[9]

In reaching this conclusion, the Board rejects the City's position that the backpay period should conclude on the date of the Decision or the date the parties' collective bargaining agreement ended.[10] If the Board set a date certain for the benefit to cease, it would in effect be reinstating the unlawful unilateral change by rescinding the economic benefit without requiring bargaining.

Additionally, with respect to who is entitled to be made whole, the Board finds that in order to fully restore the *status quo*, the financial loss described in the Decision runs to the three most senior Chief Dispatchers in the bargaining unit. This includes the three individual Chief

[9] We note that the Board's Order did not prohibit the City from restoring the vehicles. If the City were to restore the vehicles to the three most senior Chief Dispatchers, such restoration would end the backpay period. *See DC 37, Locals 461 & 508*, 8 OCB2d 11, at 22-23 (City ordered to make whole all lifeguards at certain locations for documented financial losses they incurred "from the date lifeguard access to parking was eliminated at these locations to the date access to free parking at these locations was/is restored").

[10] Moreover, we are not persuaded by the City's argument that "[e]xtending the make-whole remedy beyond the date of the decision would essentially hold this benefit out in perpetuity" and undermine the order to negotiate by providing the Union an opportunity to avoid or delay negotiations. (City Br., at 3) The Union and the City have the same duty to bargain in good faith under the NYCCBL and the same recourse to the statute's binding impasse process when bargaining has been exhausted. *See* § 1-05 (b) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1).

Dispatchers who enjoyed the benefit until the time the take-home vehicles were taken back by the City, as well as any other bargaining unit member who becomes one of the three most senior Chief Dispatchers thereafter. As noted earlier, an economic benefit is a mandatory subject of bargaining, and therefore its restoration should continue until the parties bargain otherwise. *See Local 621, SEIU*, 2 OCB2d 27. Thus, the FDNY must restore the financial benefit to any bargaining unit members serving as the three most senior Chief Dispatchers, from the date the vehicles were returned in November 2019 until such time that the vehicles are restored or the parties negotiate a resolution or exhaust the statutory impasse procedures.

With respect to the economic benefit that was unilaterally rescinded, the use of City vehicles to commute to and from work, the Board has crafted the following make whole remedy to reasonably approximate the value of that benefit and restore the *status quo*. *See UFT*, 11 OCB2d 11, at 14-15 (BCB 2018); *UFT*, 5 OCB2d 26 at 10-11. This formula takes into account the shortest practicable distance from each employee's home to his or her primary worksite and whether that employee incurs any tolls along the route. First, the parties shall determine the roundtrip number of miles from the Chief Dispatcher's primary residence to their assigned worksite ("Roundtrip Miles"). The distance must be based on the shortest practicable route and may be calculated using a GPS application such as Google Maps. Next, the Roundtrip Miles should be multiplied by the IRS Standard Mileage Rate then in effect. The resulting value is a reasonable approximation of the cost of using a personal vehicle to commute to and from work.[11] Finally, the cost of tolls that

[11] We do not find the rate set forth in Article X of the parties' collective bargaining agreement to be applicable here because "[s]aid mileage allowance is not to include payment for the distance traveled from the employee's home to the first work location in a given day or from the last work location to the employee's home unless the employee is authorized and required to carry special equipment or materials which cannot feasibly be transported via mass transit." (City Br., Ex. A, at 24) Additionally, we note that the rate set forth in the collective bargaining agreement does not

the Chief Dispatcher incurs on the shortest practicable commute, if any, should be added.[12] The resulting amount equals the value of commuting for each tour ("Cost Per Tour"). This formula is set forth below:

(Roundtrip Miles x IRS Standard Mileage Rate) + Tolls = Cost Per Tour

Finally, each of the three most senior Chief Dispatchers should be reimbursed for the Cost Per Tour times the number of tours worked. We note that application of this formula will result in different values for each of the three most senior Chief Dispatchers. For example, if one of the three most senior Chief Dispatchers lives four miles from his/her assigned work location (eight miles roundtrip), and pays $5 roundtrip for tolls, then their current Cost Per Tour is $10.[13]

Before deciding upon this formula, the Board considered possible alternatives including using $660, the annual taxable fringe benefit value of using a City vehicle determined by the City. However, considering current costs of operating a motor vehicle and tolls, we find that valuing the commute at $1.50 for each trip or $3 roundtrip per the City's explanation of the $660 annual taxable fringe benefit value is not a reasonable approximation of the cost of commuting to and

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appear to have been adjusted since at least 1999, while the IRS Standard Mileage Rate is adjusted regularly to reasonably approximate the current cost of using a vehicle.

[12] To the extent Chief Dispatchers incur tolls within the five boroughs if they were to commute to and from work by car, it is reasonable to include this cost in the backpay formula. However, should the commuting route involve tolls outside the five boroughs, this cost should not be included unless the Union can show that the FDNY does not require other employees to reimburse for these tolls.

[13] As of July 1, 2022, the IRS Standard Mileage Rate was 62.5 cents per mile. Therefore, the current Cost Per Tour in the example provided is: (8 x .625) + 5 = $10.

from work by car in 2022.[14] Moreover, this flat rate does not take into account that employees live varying distances from their assigned work locations, that some commutes may incur tolls, or that individual employees may work a different number of tours. As such, the Board fashioned the aforementioned formula, which considers each employee's unique commute by car and will result in a reasonable approximation of the financial loss stemming from the City's improper unilateral revocation of the vehicles.[15]

Accordingly, the Board orders the FDNY to use the aforementioned formula to make whole all employees serving in the three most senior Chief Dispatcher positions from the date the City-owned vehicles were returned until such time as the vehicles are restored or until the parties' negotiate over the rescission of the use of the vehicles and either reach agreement or exhaust the impasse procedures.

[14] The parties did not present any other lump sum options. Further, neither party presented evidence regarding the actual cost of commuting for any of the three most senior Chief Dispatchers after the City vehicles were returned.

[15] To the extent issues arise such that the parties are unable to apply the provisions of this remedial decision, we direct the parties to submit those issues to OCB's Deputy Chair for Dispute Resolution for final determination.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the Fire Department of the City of New York use the aforementioned formula to make whole all employees serving in the three most senior Chief Dispatcher positions for any financial loss resulting from its improper unilateral change from the date the City-owned vehicles were returned until such time as the vehicles are restored or until the parties' negotiate over the rescission of the use of the vehicles and either reach agreement or exhaust the impasse procedures; and it is further

DIRECTED, that to the extent issues arise such that the parties are unable to apply the provisions of this remedial decision, we direct the parties to submit those issues to OCB's Deputy Chair for Dispute Resolution for final determination.

Dated: August 3, 2022
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

M. DAVID ZURNDORFER
MEMBER

CAROLE O'BLENES
MEMBER

CHARLES G. MOERDLER
MEMBER

PETER PEPPER
MEMBER