
**MINUTES
BUFFALO FISCAL STABILITY AUTHORITY
TUESDAY, DECEMBER 11, 2007**

The following are minutes from the Buffalo Fiscal Stability Authority (BFSA) meeting on Tuesday, December 11, 2007, at the Buffalo and Erie County Public Library's Central Branch.

Directors Present: Arthur, Brown, Giambra, Giardino, Johnstone, Kolkmeier, Mertz, Norwood, and Townsend

Staff Present: Kelly, Link, Miller, Mitchell, Mobley and Stefko

Others Present: A. Vincent Buzard, BFSA Counsel with Harris Beach

Opening Remarks

Chair Paul Kolkmeier called the meeting to order, and asked Secretary George Arthur to call the roll. Arthur confirmed that a quorum was present, although Directors Brown and Giardino were not present when roll was called.

Chair Kolkmeier advised that the first order of business would be an executive session to discuss litigation matters. He reminded Directors and members of the audience of the requirements of the State Public Officers Law relating to executive sessions. He asked for a motion to enter executive session.

Motion by Mertz, second by Townsend.

**EXECUTIVE SESSION MINUTES
BUFFALO FISCAL STABILITY AUTHORITY
TUESDAY, DECEMBER 11, 2007**

The following are minutes from the Executive Session held by the Buffalo Fiscal Stability Authority (BFSA) on Tuesday, December 11, 2007, at the Buffalo and Erie County Public Library's Central Branch. The Executive Session was called at approximately 1:10 pm, after Board Secretary George K. Arthur called the roll and confirmed the presence of a quorum, and after Chair Paul Kolkmeier read a section of Article VII of the Public Officers Law pertaining to the rules governing the use of an Executive Session.

Directors Present: Arthur, Giambra, Johnstone, Kolkmeier, Mertz, Norwood, and Townsend
(Note: Mayor Brown and Director Giardino were not present at the start of the Executive Session, but joined the Session in progress as noted in the minutes below)

Staff Present: Dr. Joseph Stefko, Acting Executive Director; Bertha Mitchell, Chief Financial Officer; Michael Kelly, Principal Analyst; and Greta Mobley, Principal Analyst

Others Present: A. Vincent Buzard, BFSA Counsel with Harris Beach

Executive Session

Chair Kolkmeier called the Executive Session to order and introduced A. Vincent Buzard, BFSA's Counsel with Harris Beach, to discuss litigation matters affecting BFSA. Before Mr. Buzard began his discussion, Director Arthur asked whether BFSA staff should be present in the room during the Executive Session. While no other Director raised an objection, Mr. Arthur asked that the record show he objected to having staff present.

Mr. Buzard began his discussion by reminding Directors that Executive Session discussions were confidential and should be treated as such by both Directors and staff.

< Mayor Brown entered the Executive Session at this time >

Mr. Buzard summarized legal issues impacting both concluded and pending lawsuits against BFSA. Regarding ongoing litigation, he spoke also about the time frame for future proceedings.

< Director Giardino entered the Executive Session during Mr. Buzard's discussion of concluded and pending lawsuits >

There being no further business to address, the Executive Session concluded at 2:10 pm on a motion from Director Townsend, seconded by Director Norwood.

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Immediately following the Executive Session, Chair Kolkmeier called the Board meeting back to order.

Approval of Minutes

Chair Kolkmeier asked for a motion to ratify the minutes from the previous BFSA Board meeting.

Motion by Mertz, second by Townsend. Vote 9-0 to take effect immediately.

RESOLUTION NO. 07-65

APPROVING MINUTES AND RESOLUTIONS FROM NOVEMBER 7, 2007

BE IT RESOLVED that the Buffalo Fiscal Stability Authority approves the minutes of its meeting of November 7, 2007, and ratifies and affirms resolutions numbered 07-48 through 07-64 that were approved November 7, 2007.

This resolution shall take effect immediately.

City Issues

Proposed Collective Bargaining Agreement

Chair Kolkmeier introduced a collective bargaining proposal which had been submitted by the City. He invited Mayor Brown to summarize the proposed agreement prior to BFSA's staff analysis.

Mayor Brown stated that the proposed agreement has been negotiated with the Buffalo Crossing Guard Association for several months. It represents a wage increase for the members of the union, many of whom currently earn less than the State's minimum wage and the City's Living Wage. He stated that, if ratified, the contract will be the first approved by a City union since the inception of the BFSA. The contract contains many changes in wages and benefits which set the model for recovery of paid time off, health insurance concessions and changes in management rules. He stated that the proposed contract includes an increase of approximately \$2 per hour for these employees. He concluded by saying that the contract was affordable to the City and taxpayers. He further detailed changes in the health insurance and paid "snow days."

Motion to approve the item by Arthur, second by Brown.

Recognizing that there was more discussion of this item, Chair Kolkmeier asked Acting Executive Director Dr. Joseph Stefko to summarize the BFSA's staff analysis of the contract.

Dr. Stefko utilized a slide presentation and provided an overview of the contract which included the following points:

➤ Current Contract Provisions

- The Buffalo Crossing Guard Association is comprised of 157 part-time employees who work four hours a day, totaling 744 a year;
- The last contract expired in June 2004;
- Hourly wages currently range from \$7.09 to \$8.25 an hour;
- Fringe benefits include health insurance and pension eligibility;
- Paid time off includes five holidays, six sick days and five snow days; and

- The fully loaded hourly costs with all wages and benefits range from \$13.73 per hour for members with single health insurance and \$21.65 per hour for members with family coverage;
- **Key Provisions of the New Contract**
 - Wage increases range from 21-35% in the first year and 23-40% over three years;
 - Signing bonus of \$200 per employee;
 - Bonus for waiving health insurance - \$600 annually for single coverage, \$1,200 annually for family coverage;
 - Reduction of one “snow day”; and
 - Increased health care contributions – 5% in the first year and 10% thereafter.
- **Minimum Wage vs. Living Wage**
 - City’s Living Wage rate exceeds both the Federal and State minimum wage.
- **Payments in Lieu of Health Insurance**
 - \$600/ year single plan waiver; \$1,200 family plan waiver; and
 - New recurring cost, but there exists savings potential – for each single plan opt-out, City saves \$2,760 – for each family plan opt-out, City saves \$8,120.
- **Comparison of Total Costs (Current vs. New Contract)**
 - Year 2007-08 (up 22%)
 - ✦ Current Contract - \$1.58 million
 - ✦ New Contract - \$1.94 million
 - Year 2008-09 (up 21%)
 - ✦ Current Contract – \$1.64 million
 - ✦ New Contract - \$1.99 million
 - Year 2009-10 (up 20%)
 - ✦ Current Contract - \$1.70 million
 - ✦ New Contract - \$2.04 million

Director Norwood inquired about what assumptions were made in the analysis regarding the number of employees that would opt-out of insurance. Dr. Stefko responded that the analysis assumes a flat rate of employees, and the current rate of insurance opt-outs. He separately noted the savings potential of the payment in lieu of health insurance.

Dr Stefko concluded his presentation with a final slide regarding a comparison of hourly per employee costs under the current vs. new contracts.

- **Comparison of Hourly Costs**
 - Current Contract
 - ✦ Up to \$13.73/ hour (with single health insurance)
 - ✦ Up to \$21.65/ hour (with family health insurance)
 - New Contract
 - ✦ Up to \$16.27/ hour (with single health insurance)
 - ✦ Up to \$24.83/ hour (with family health insurance)

Director Johnstone asked a question about what health benefits these individuals would receive in retirement. Mayor Brown responded that the healthcare provisions an employee retires under would continue in retirement.

Director Townsend commented that the proposed contract had elements both admirable and troubling. She expressed that she has conceptual problems with the notion of a living wage mandate for part-time, part-year employees, when the concept of a living wage was intended for someone working full-time for an entire year. Also, given the other benefits of this package (health insurance, pension, retiree health insurance), she expressed concern. She wondered if the large first-year wage increase could be phased in over a longer period of time to better reflect the CPI. She also pointed out that in contracts covering the period 2002 to 2004, this union received other benefits as opposed to wage increases. She also questioned whether such a large wage increase could set unsustainable precedent for other City unions. With these issues in mind, she noted that she could not support the contract.

Director Arthur expressed his support for the contract, and indicated that this union has met BFSA's prior guidance for negotiating agreements. He feels that the union lived up to the rules and negotiated a deal which offers concessions. He also noted that this contract is not the first time a City union has received a large percentage wage increase, citing several historical examples as precedent. Further, he noted that members of the Board took an oath of office to uphold laws, and the Living Wage Ordinance is a law and ordinance.

Director Arthur continued by stating that the Living Wage Ordinance will not have an effect on the School District, because its employees are not covered by the law. He pointed out that the Board of Education is currently studying a living wage resolution in committee, but that should not have any bearing on the contract presented.

Director Johnstone asked how much it would cost the City to bring all eligible employees up to the City's Living Wage. Mayor Brown responded that it would cost the City an estimated \$400,000 annually. He indicated that it would be his intention to bring such a proposal to BFSA for approval.

Chair Kolkmeier asked what the impact would be to the District if they were required to follow an ordinance akin to the City's. He requested that School District Chief Financial Officer Gary Crosby address the issue. Mr. Crosby stated that the cost would be in excess of \$11 million over a three year period. This excludes the impact of a potential "trickle-up effect," whereby as the wages of lowest-paid workers are increased to living wage levels, those employees with higher-level positions would be entitled to commensurate wage increases. It also excludes any impact of applying such a wage policy to contractors with which the District does business.

Director Arthur asked about the status of the Board of Education's consideration of the living wage. He also questioned the validity of the \$11 million impact figure, and said that the final impact could be different depending on the resolution that the Board of Education ultimately adopts.

Mayor Brown stated that the discussion was irrelevant to the contract presented, since the City's Living Wage Ordinance does not currently apply to the School District.

Director Giardino sought clarification on the size of the union, the contract's expiration year and the per employee net cost of the new contract. Dr. Stefko responded by stating that the union currently has 157 members, the contract expired in 2002 but had a Memorandum of Agreement extending the provisions of the contract to 2004 while increasing some of the fringe benefits, and finally that the per employee cost increase of the new contract is \$2,300.

Director Townsend stated that the Board's charge is to evaluate the contract based on its merits, not the provisions of the Living Wage Ordinance. It does not violate the law to disapprove the contract as presented, since BFSAs powers to approve contracts supersede local ordinances.

Director Arthur presented a point of correction that the Ordinance had been amended in 2004, not 2007. Mayor Brown requested City Corporation Counsel Alisa Lukasiewicz to provide the legal opinion on this point. Ms. Lukasiewicz verified that Director Arthur was correct, and Director Townsend pointed out that by that logic, the City was therefore not following its own ordinance for a period of time.

Director Johnstone expressed her increasing concern about not understanding the living wage issue. She further stated that it is not BFSAs role to disapprove contracts but rather to approve them, with the goal of long-term fiscal stability. However, given the lack of information and understanding of some of the issues surrounding this contract, she felt that the resolution should be tabled.

Motion to table by Johnstone. There being no second, the motion was not carried.

Director Mertz stated that BFSAs does not negotiate contracts but does have the responsibility to vote on their approval or disapproval. During the wage freeze period, the thought had been that new contracts should provide a net savings for the City. He also pointed out that this contract provides for a cost increase of 20 percent, whereas in his line of work annual increases have tended to be in the range of three-and-a-half to five percent. He expressed that BFSAs has an obligation to come up with some guidelines for negotiating contracts.

Director Giardino agreed with Director Johnstone about the lack of clarity regarding some legal issues of this contract. Yet, he stated his feeling that the proposed increase in wages was a fair compensation for City employees who have not had a wage increase since 2000, especially considering the importance of their role in the safety of the City's youth.

County Executive Giambra stated that, as an original member of BFSAs, the organization has worked very hard along with the City for improvements. The wage freeze was a necessity but was passed with much consternation, trepidation and concern. To expect agreements with more net savings for the City is unrealistic because of State labor rules. The contract as presented by the Mayor is "the best we can get."

Director Mertz questioned how retiree healthcare was funded. Dr. Stefko stated that the terms and conditions of health insurance under which the employee retires, continue in retirement. The City would continue to pay the difference. For example, for an eligible retiree who left service yesterday, the City would continue to pay approximately \$9,100 or \$9,200 per year for their

health insurance in the family plan. The City pays those costs on a pay-as-you-go basis. Director Mertz responded that this contract was as much a “health care contract” as it was a contract for wages. Mayor Brown noted that the health insurance benefit has been in place for some time, and is not new to this contract.

Chair Kolkmeier called an end to the discussion and asked for a vote. He asked Director Arthur to conduct a roll call vote:

Mayor Brown – Yes
Director Giambra – Yes
Director Giardino – Yes
Director Johnstone – Abstain
Director Kolkmeier – No
Director Mertz – No
Director Norwood – No
Director Townsend – No
Director Arthur – Yes

Vote total was 4 yes, 4 no, with 1 abstention. The resolution did not carry.

Motion to reconsider by Arthur, second by Johnstone.

Motion to table by Arthur, second by Johnstone. Vote 9-0 to table the item.

Chair Kolkmeier stated that he wished to extend an “olive branch” to the City and the unions. He stated that the Board and staff take no pleasure in disapproving contracts and hopes, with additional dialogue, to continue working with the Administration going forward. Director Mertz added that in his career he has agreed to approximately 20 contracts with unions, and this is the first time he has had to say no, and doesn’t like saying no to contracts.

Mayor Brown stated that he was at a loss as to why the contract had not passed. He noted that the contract was affordable, and obtained givebacks. He stated that it was a painful disappointment.

Update on short-term cash flow borrowing

Chair Kolkmeier invited City Comptroller Andrew SanFillipo to address the Board and provide an update on the proposed short-term borrowing.

Comptroller SanFillipo stated that he was pleased to announce that the City most likely would not have to enter the RAN market for cash flow. City and School District revenues are out-pacing projections, and expenditures are being incurred at a lesser rate than anticipated. For the first time in probably 30 years, the City will not require cash flow borrowing. This is attributable to conservative budgeting and the oversight of BFSA, and evidence of the City’s fiscal improvement. It also adds to the City’s creditworthiness.

Revised projections show the City's lowest cash point in the month of December to be approximately \$20 million. The absence of a need for cash flow borrowing will save \$4 million originally budgeted for financing costs.

School District Issues

Chair Kolkmeier invited Mr. Crosby to address the Board regarding implications of the pending wage freeze litigation.

< Mayor Brown left the meeting at this time >

Utilizing a slide presentation, Mr. Crosby made the following points:

- If the District was required to submit a financial plan modification to pay out multiple steps, the total projected deficit would be \$110 million, despite large increases in State aid
- State aid is up \$152 million over the four-year period, a record increase
- There are three primary cost drivers: four-steps and annual increments = \$130 million increase, Health insurance w/o single health insurer savings = \$76 million increase, and Charter School payments = \$46 million increase (Total increases of \$262 million, with utilities making up the difference)

Director Arthur asked for clarification on the charter school cost projections. Mr. Crosby noted that the \$46 million figure is just an increase over four years. Arthur requested backup information to verify that analysis.

Mr. Crosby explained the District's revenue base and the potential for aid increases in the near future. He noted that it is highly unlikely that the District will receive aid increases above and beyond what has already been pledged, given the State's projected deficit.

Mr. Crosby also addressed the question of whether or not the District planned for this lawsuit contingency. He noted that it had, by building up some reserves in the past two years. However, there is just not enough money next year or the following years to cover the accumulating deficits. The step increases would cost \$130 million over four years (\$23.5 million this year, \$29.5 million the following year, \$35.5 million in year three and \$41.5 million in year four). He also showed the financial impact of step increases by using the example of an individual employee.

Chair Kolkmeier thanked Mr. Crosby, asked for additional questions, and stated that as long as the legal appeal is pending, BFSAs will not require or entertain a financial plan modification to pay out the full amount of the steps.

< Director Giardino left the meeting at this time >

BFSA Issues

Update on Executive Director Search Process

Chair Kolkmeier provided the Board with an update on the status of the search to hire a permanent Executive Director. He indicated that advertising had been placed with a number of outlets, both print and online. The Committee will contact select finalists for interviews and general question-and-answer meetings, to be followed by a more detailed interview with select candidates. The Committee hopes to present the top candidate or candidates for consideration at the next Board meeting near the end of January.

Director Arthur stated that he had requested a list of the times the committee has met but has not received an answer. Chair Kolkmeier indicated that the Committee has not formally met, and that everything to-date had been done via email. Arthur requested email correspondence to keep him updated on the process. Kolkmeier responded that he has kept Mr. Arthur and the Board updated on the process via email. Arthur requested a list of everyone who applied and what the schedule and process are for reviewing them.

Chair Kolkmeier responded that the Committee will summarize information for the Board as available. He stated that the Committee has not held a meeting to date.

Vice Chair Townsend stated that it would be unusual for the members of the full Board to be involved in the Search Committee's review process.

Adjustment to Hiring Freeze

Dr. Stefko summarized a resolution regarding the hiring freeze on the City of Buffalo and BMHA which implements a new process for tracking employment levels, vacant positions and new hires.

Motion to approve by Mertz, second by Giambra. Vote 6-0 to take effect immediately.

RESOLUTION NO. 07-66

REGARDING THE HIRING FREEZE ON THE CITY OF BUFFALO AND BUFFALO MUNICIPAL HOUSING AUTHORITY, IMPLEMENTING A NEW PROCESS FOR TRACKING EMPLOYMENT LEVELS, VACANT POSITIONS AND NEW HIRES

WHEREAS, on December 15, 2003, pursuant to Resolution 03-70, the Buffalo Fiscal Stability Authority ("BFSA") imposed a hiring freeze on the City of Buffalo ("City"); and

WHEREAS, Resolution 03-70 provided that the hiring freeze on the City could be waived and a position filled on a case-by-case basis in instances where "the immediate filling of a position is necessary to protect the health or safety of the City of Buffalo, is required to comply with the City Charter, will prevent the use of excessive overtime by City employees or will produce revenue in excess of the costs of filling the position"; and

WHEREAS, on January 26, 2005, pursuant to Resolution 05-08, BFSA imposed a hiring freeze on the Buffalo Municipal Housing Authority (“BMHA”); and

WHEREAS, Resolution 05-08 provided that the hiring freeze on BMHA could be waived and a position filled on a case-by-case basis in instances where “the immediate filling of a position is necessary to protect the health or safety of the residents of the Buffalo Municipal Housing Authority, is required to comply with the local, state or federal law, will prevent the use of excessive overtime by BMHA employees or will produce revenue in excess of the costs of filling the position”; and

WHEREAS, pursuant to the process established by Resolution 03-70 and Resolution 05-08, both the City and BMHA have submitted hiring freeze waiver requests for BFSA review and approval since the respective imposition dates of the City and BMHA hiring freeze; and

WHEREAS, in an effort to balance the interest of efficiency with the necessity of continuing to monitor the size and costs of the workforce, as well as the number of vacant positions and the rate at which vacant positions are filled.

NOW THEREFORE BE IT RESOLVED, that the City of Buffalo and Buffalo Municipal Housing Authority will not be required to submit hiring freeze waiver requests to the Buffalo Fiscal Stability Authority in order to fill positions contained within the operative budget that was approved by the Buffalo Fiscal Stability Authority, and for which adequate funding remains available; and

BE IT FURTHER RESOLVED, that in order to fill any positions that are not contained within the operative budget that was approved by the Buffalo Fiscal Stability Authority; positions in excess of those contained within the approved budget; or positions otherwise requiring modification of the approved budget, the City of Buffalo and Buffalo Municipal Housing Authority will be required to submit such modification to the Buffalo Fiscal Stability Authority for review and approval; and

BE IT FURTHER RESOLVED, that the City of Buffalo and Buffalo Municipal Housing Authority are hereby required to submit to the Buffalo Fiscal Stability Authority, no later than seven days after the conclusion of each month, a report detailing the total number of filled and vacant positions as of the end of the previous month, as well as a listing of positions, by title, filled during the previous month.

This resolution shall take effect immediately.

Approved December 11, 2007

BFSA Banking Authorizations

Dr. Stefko summarized a resolution to authorize signatories and signing restrictions for deposit accounts at HSBC Bank, USA.

Motion to approve by Giambra, second by Townsend. Vote 6-0 to take effect immediately.

RESOLUTION NO. 07-67

AUTHORIZED SIGNATORIES AND SIGNING RESTRICTIONS FOR DEPOSIT ACCOUNTS AT HSBC BANK, USA AND AT BANK OF NEW YORK AND APPROVAL TO OPEN NEW DEPOSIT ACCOUNTS AT HSBC OR BANK OF NEW YORK WITH SAME SIGNATORIES AND RESTRICTIONS

WHEREAS, in order to efficiently carry out the requirements of Chapter 122 of the Laws of 2003, the Buffalo Fiscal Stability Authority (the "BFSA") has or will establish certain deposit accounts (the "Accounts") at HSBC Bank, USA; and

WHEREAS, in order to efficiently carry out the requirements of the BFSA Act, from time to time it is necessary for the BFSA to open new Accounts so that certain incoming funds can be segregated for specific purposes and transferred to another BFSA account or to the City as necessary; and

WHEREAS, the BFSA desires to appoint certain authorized signatories and to establish certain signing restrictions for the operations of all Accounts, other than for those where specific authority has been given by separate resolution.

NOW THEREFORE, BE IT RESOLVED, that in connection with the signing of checks, drafts funds transfers or other orders for the payment of money issued in the name and on behalf of the BFSA against any funds deposited in the Accounts, the following authorized signatories and signing restrictions will apply to all transactions:

1. The Chair, Vice Chair, Treasurer, Deputy Treasurer, and Acting Executive Director are each authorized as a sole signer for any payment up to and including \$25,000.00; and
2. Two of the above-listed signatories of the BFSA are required to jointly sign for any payment over \$25,000.00.

BE IT FURTHER RESOLVED, that the Chair, Vice Chair or the Acting Executive Director can authorize the opening of new Accounts at the HSBC Bank, USA or at the Bank of New York, provided that the new Accounts will operate under the same signatories and restrictions above.

This resolution shall take effect immediately.

Approved December 11, 2007

Closing Remarks

Vice Chair Townsend recognized that this was Director Giambra's last BFSA meeting, and she reiterated her comments from the last meeting regarding his service to BFSA.

There being no further business, Chair Kolkmeier called the meeting to an end.

Motion by Norwood, second by Giambra.

The meeting adjourned at 3:31 pm.