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**MINUTES  
BUFFALO FISCAL STABILITY AUTHORITY  
FRIDAY, NOVEMBER 14, 2008**

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The following are minutes of the Buffalo Fiscal Stability Authority (BFSA) meeting held on Friday, November 14, 2008, at the Buffalo Niagara Convention Center.

**Directors Present:** Arthur, Brown, Collins [via proxy], Giardino, Johnstone, Kolkmeier, Mertz, Norwood & Townsend

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

**Others Present:** William Smith (BFSA Counsel with Harris Beach)

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**Opening Remarks**

The regular meeting of the Buffalo Fiscal Stability Authority (BFSA) was called to order at 1:00 pm by Chair Paul J. Kolkmeier. The meeting was convened by a Notice of Meeting sent to the Board of Directors and announced to the public and press. Mr. John Schmidt attended on behalf of Erie County Executive Chris Collins, pursuant to §3853 of the BFSA Act.

Chair Kolkmeier welcomed all in attendance. He summarized the meeting's agenda as follows:

- \* A one-year collective bargaining agreement between the School District and the Food Service Helpers and Cooks, a unit of AFSCME Local 264;
- \* BFSA's ongoing benchmarking study – a drilldown into the makeup of revenues for the City of Buffalo and other peer cities;
- \* An update on overtime costs for the Police and Fire Departments;
- \* The changes to the Contract Approval process; and
- \* A recommendation from the Governance Committee regarding an amended Travel Policy.

He requested a roll call from Secretary Arthur. Finding a quorum present he called the meeting to order.

**Approval of Minutes**

Chair Kolkmeier directed the Board to BFSA's September 18, 2008, meeting minutes and asked for a motion to approve.

Motion by Mertz, second by Johnstone.

Director Arthur proposed the following new language:

**Page 11, paragraph 13 –**

- \* **Original Language** – Director Arthur stated, "I'm putting it in your hands."

- \* **Proposed New Language** - Director Arthur stated, "I'm **putty** in your hands."

Chair Kolkmeier asked Executive Director Bertha H. Mitchell to summarize an additional amendment. She explained that page 9, paragraph 10 stated, "At 1:59 PM Mayor Brown exited the proceedings." This line should be omitted.

Chair Kolkmeier asked for a motion to accept the proposed new language.

Motion by Townsend, second by Mertz. Approval 9-0 to accept the minutes as amended.

## **RESOLUTION NO. 08-46**

### **APPROVING MINUTES AND RESOLUTIONS FROM AUGUST 20, 2008**

BE IT RESOLVED that the Buffalo Fiscal Stability Authority approves the minutes of its meetings of September 19, 2008, and ratifies and affirms resolutions numbered 08-41 through 08-45 that were approved September 19, 2008.

This resolution shall take effect immediately.

### **School District Issues**

#### ***Collective Bargaining Agreement with Local 264***

Chair Kolkmeier introduced a proposed collective bargaining agreement [CBA] between the Buffalo School District and a bargaining unit of AFSCME Local 264. He asked Mrs. Mitchell to summarize the proposed contract.

Motion to approve by Arthur, second by Mertz.

Mrs. Mitchell utilized a slideshow presentation and provided the following summary:

#### **New Provisions-**

- \* The labor union agreement covers 410 workers, including 380 Food Service Helpers and 30 Cooks. They work about six hours daily with a schedule that fluctuates.
- \* The agreement was approved by the union membership on October 14<sup>th</sup>; it was subsequently approved by the Buffalo Board of Education on October 15<sup>th</sup>.
- \* The contract covers the period July 1, 2004, to June 30, 2008, and replaced a previous agreement covering the period of July 1, 2000, to June 30, 2004.
- \* The contract is for one year; costs have been calculated on a four-year cumulative basis to cover the costs through the financial plan.
- \* The two major provisions include:
  - A 10 percent raise for all covered employees, from October 28, 2008 forward with no retroactivity;
  - A one time \$150 signing bonus for those employed as of October 15 and still employed as of the date the bonus checks are processed.
- \* The union will withdraw from its current steps litigation against both the School District and BFSA. The savings from this action are estimated at \$65,000, which is a one-time contingent non-recurring saving.

- \* Employees in this union are eligible to purchase health insurance through the District, provided that they pay 100 percent of the premium. They may also opt into the New York State Employees Retirement System.

**Provisions remaining constant –**

Employees receive:

- \* Eight paid holidays throughout the school year;
- \* Unlimited paid snow and emergency closing days during school year;
- \* Four personal days per year in years 1-4, five days thereafter and unused personal days paid out;
- \* An additional \$25/a pay period for not calling in (up to \$150/yr.);
- \* Longevity pay \$150/year, \$300/ year, \$450/ year, depending on years of service;
- \* A \$225/year for uniform allowance; and
- \* Paid time off to take Civil Service exams.

**Cost Calculations -**

- \* BFSAs cost calculations were similar to District cost estimates for this contract, averaging approximately \$350,000 a year.
- \* Over the four year period that this contract was reviewed, the total costs of the contract are projected to be approximately \$1.4 million.
- \* There is an approximate difference of \$350,000 per year between the current and proposed costs.
- \* The final total costs over the life of this group of employees under the proposed labor agreement equal \$15,739,181.

Following Mrs. Mitchell’s presentation, Chair Kolkmeier welcomed Directors to voice any comments regarding the proposed CBA.

Vice-Chair Townsend asked how much was covered by State and/ or Federal Aid. School District Chief Financial Officer Gary Crosby addressed the Board and stated that 100 percent of the Food Service Fund was contributed by either Federal or State Aid.

Mayor Brown stated that the contract was a one year contract rather than a four year contract. He asked what the Board’s position was regarding CBA’s length. Chair Kolkmeier stated that it is the Board’s preference to have four year contracts reviewed within the context of the Financial Plan. He asked Mr. Crosby to provide further explanation for the proposed CBA’s length.

Mr. Crosby explained that the District decided to give the union the proposed CBA without going into multi year negotiations. The new contract will increase worker compensation for some of the lowest paid employees who have little to “give-back” in negotiations. With deference to the current economic climate and the uncertainty of Federal and State Aid, the District felt that a one year CBA was prudent until the impact of the anticipated cuts in State aid are known. The withdrawal from litigation is viewed as very favorable.

Mayor Brown expressed further displeasure that the proposed contract was for one year and not four. Mr. Crosby stated that there is an understanding with the union that negotiations for a

longer CBA will commence when the District has more financial certainty. A four year CBA is normally preferential; the District is not currently in the position to negotiate a long-term deal.

Director Arthur asked how the workers covered in the contract compare with those covered under the City's "Living Wage" Ordinance. Mr. Crosby stated that \$11.11 is the current Living Wage standard. It is expected to increase January 1<sup>st</sup> by 3 to 4 percent. The bulk of the school workers are paid at the Tier 3 level which pays \$7.52 [step 1], increasing to \$8.27 under the new agreement. Tier 4, step 1 currently pays \$8.73 increasing to \$9.60.

Director Arthur asked whether they qualify for food stamps, SSI etc. and the answer was yes. The District was examining a Living Wage policy similar to the City's. He also asked, "When did the Living Wage Agreement go to the Board of Education?" He stated that it was a shame that the contract's length was not longer and with greater compensation, especially considering the source of the aid. Mr. Crosby stated that the Board of Education had been examining the issue of a Living Wage for several months. The District was not in a position to offer a longer term contract until the funding sources are assured.

Chair Kolkmeier called for a vote. Approval 9-0.

**RESOLUTION 08-47  
APPROVAL OF COLLECTIVE BARGAINING AGREEMENT WITH FOOD SERVICE  
HELPERS AND COOKS REPRESENTED BY AFSCME LOCAL 264**

WHEREAS, Chapter 122 of the Laws of 2003, Section 3858(2)(e), requires that during a control period the Buffalo Fiscal Stability Authority ("BFSA") shall approve or disapprove any collective bargaining agreements binding or purporting to bind the City of Buffalo ("City"); and

WHEREAS, the BFSA is required to promptly review a collective bargaining agreement that is submitted to it and shall disapprove any collective bargaining agreement that is not in compliance with the approved financial plan; and

WHEREAS, the City of Buffalo School District (the "School District"), a covered organization, has submitted to the BFSA a Collective Bargaining Agreement between the School District and Food Service Helpers and Cooks represented by AFSCME Local 264 ("Local 264"); and

WHEREAS, on October 14, 2008, the said members of Local 264 approved a Collective Bargaining Agreement for the period of July 1, 2004 through June 30, 2009, replacing a previous Collective Bargaining Agreement covering the period of July 1, 2000 through June 30, 2004 between the City and Local 264; and

WHEREAS, the City of Buffalo School District submitted such agreement with supporting materials to the BFSA for approval under Section 3858(2)(e) of the Act, and has fully and promptly complied with all information requests of the BFSA; and

WHEREAS, the agreement provides for a ten percent wage increase to Food Service Helpers and Cooks as members of Local 264, in addition to a one-time one hundred and fifty dollar bonus to members, and

WHEREAS, the agreement provides for the terms and conditions of employment for a one year period from the date of BFSA approval and supersedes any other terms and conditions for that period, and

WHEREAS, the City of Buffalo School District will pay for the increased costs of this collective bargaining agreement through the use of preexisting fund balance savings in the Food Service Fund; and

WHEREAS, Food Service Helpers and Cooks, as members of Local 264, withdraw with discontinuance on the merits with prejudice litigation against the City of Buffalo School District and BFSA concerning the steps upon the lifting of the wage freeze, and

WHEREAS, on October 15, 2008, the agreement was approved by the Buffalo Board of Education.

NOW, THEREFORE, BE IT RESOLVED, that the BFSA does hereby approve the aforementioned agreement between the City of Buffalo School District and AFSCME Local 264 (Food Service Helpers and Cooks), with wage increases effective as of October 27, 2008.

This Resolution shall take effect immediately.

***Point of Order by Director Arthur***

Director Arthur raised concerns regarding the scheduling of meetings. He was dissatisfied that the meeting had been moved from November 5<sup>th</sup> to November 14<sup>th</sup>. He questioned whether staff had arbitrarily changed the meeting date without an adequate directive from the Board.

Chair Kolkmeier acknowledged Director Arthur's frustrations. The decision to reschedule the meeting was an attempt to accommodate the Administration to review a firefighters' CBA to be submitted to the Board which had come in for approval. Mr. Arthur argued that the postponement had put aside to later another School contract that was up for approval. He stated that if the analysis for the firefighters' contract was not ready the meeting on the 5<sup>th</sup> should have gone on and a new meeting scheduled for the other contract. Scheduled meetings should be held and if there is no quorum then the meeting could be adjourned. Chair Kolkmeier answered that he has been trying to be accommodating to the requests for approvals from the Administration. The aim of the Board is to hold timely meetings while addressing the limitations of the members' schedules.

Mayor Brown echoed Director Arthur's sentiments regarding rescheduling the Board Meeting. He stated that he felt that he did not have the opportunity to inject his opinion regarding the cancellation and rescheduling of the a new meeting date and had found out about the change, "after the fact.". Director Arthur then insisted that an annual meeting date schedule need to be approved by the full Board as per the Bylaws. Chair Kolkmeier stated that the schedule that had

been made available to the Board for consideration would be brought forward for approval of the full board at the December meeting.

Director Arthur requested that Harris Beach counsel review the Bylaws regarding the scheduling and rescheduling of meetings. He suggested that meetings be perhaps scheduled based on the models established by local governments.

### **BFSA Presentation**

#### ***Benchmarking Project – City Part II***

Chair Kolkmeier introduced the ongoing BFSA benchmarking project comparing the City of Buffalo with its peer cities. He asked Principal Analyst Mike Kelly to provide further information.

Mr. Kelly gave a slide show presentation which included the following:

#### **Introduction**

- \* The presentation is the second installment in the City’s benchmarking study.
- \* The peer cities included were [emphasis on the New York cities]:
  - Albany;
  - Akron, Ohio;
  - Pittsburgh, PA;
  - Rochester;
  - Syracuse;
  - Springfield, MA; and
  - Yonkers.
- \* The study was limited by the availability of the underlying data and the lack of available information.

#### **General Fund Revenue Comparison [per capita basis]**

- \* Buffalo’s per capita revenue equals \$1,596, a low mark for the study cities.
- \* Yonkers tops the list with per capita general fund revenue of \$3,061.
- \* Rochester’s per capita revenue is fully \$672 more than Buffalo’s.
- \* Syracuse’s per capita revenue is \$468 more than Buffalo’s.

#### **Main Sources of Revenue**

- \* State Aid,
- \* Real Property Tax, and
- \* Sales Tax and other revenues.

Buffalo’s general fund revenues total \$435.1 million while Yonkers is at the high end totaling \$605.7 million.

#### **“All Other Revenue”**

“All Other Revenue” includes the following:

- \* Miscellaneous
  - Hotel/Motel taxes;
  - Other federal sources;
  - CDBG (for Rochester);

- Off Track Betting revenue;
- Transfers from miscellaneous entities (Buffalo’s Water Board); and
- Various reimbursements
- \* Departmental;
- \* Utility/Franchise taxes;
- \* PILOTS (Payments In Lieu of Taxes);
- \* Real estate / mortgage taxes;
- \* Interest;
- \* Fund Balance;
- \* Income Tax; and
- \* 911 reimbursements.

Not all study cities realize revenues from all of these categories. Buffalo’s departmental revenues are the highest for the study cities at \$19.5 million. Buffalo’s utility/ franchise fees produce \$11.6 million and are also the highest. Buffalo’s PILOT revenue is the lowest amongst the study cities at \$5.1 million and its interest revenue is the third lowest at \$3.4 million. Finally, Buffalo’s total “all other” revenues equal nearly \$53.7m, Rochester’s \$75.3m, Syracuse’s \$50.5m, and Yonker’s \$119 million.

### **Sales Tax Rate**

- \* New York State receives 4% of all sales tax collected with the remaining balance shared between the county and local municipalities.
  - The tax rate in Albany County is 8%; of which the State receives 4% of the sales tax, leaving Albany County to allocate the remaining 4% between cities, towns, villages, and school districts within the county.
  - Yonkers appears to be an outlier (or that their share of the sales tax seems larger than the other cities). This is because that they levy their own sales tax and do not receive any sales tax from Westchester County (while providing the county with 1.5% of their 8.375% sales tax).
  - Albany County collects \$453.6M and the City of Albany receives \$30M or 6.5% of the total sales tax collected in Albany County. Of the approximate \$1.2B collected in Erie County, the City receives \$68M or 6.3% of the total sales tax collected.

### **Real Property Tax**

- \* BFSAs looked at the median real property taxes paid in the counties that the study cities are located. In particular BFSAs looked at the median real property taxes paid in the counties that the study cities are located.
  - In Erie County, where Buffalo is located, the median real property tax paid was \$2,822, which placed Erie County at number 132 out of 788 counties nationwide. The 788 counties that were included in the study, are counties with a population of at least 65,000, there is a total of 3,077 counties in the US excluding Puerto Rico.
  - In Westchester County, where Yonkers is located, the median real property tax is \$8,422, ranked number one out of 788 counties nationwide. Another way of looking at this is to conclude that Yonkers is the highest taxed county in the country.

- In Monroe County, home to Rochester, the RPT is \$3,629, and in Onondaga County, home to Syracuse, the median RPT is \$3,056, while Albany County, home to Albany, has a median RPT of \$3,321.
- The most telling of all of these comparisons might be the national average. The national average for median RPT is \$1,838, fully \$984 less than Erie County, and as you can see each of the counties and cities in this study far surpass the national averages for Real Property Taxes.

**Real Property Taxes (as a percentage of home values)**

- \* In Erie County, home to Buffalo, tax payers have an effective tax rate of 2.5% of a median home value of \$112,000, which ranks number seven nationally. This means that residents typically pay 2.5% of what their home is worth in taxes on a yearly basis.
- \* In Niagara County, the effective tax rate on a median home value of \$95,800 is 2.9%, which gives Niagara County the dubious distinction of ranking number one on the scale of real property taxes as a percentage of home value.
- \* Monroe County, where Rochester is located is ranked number two nationally, Onondaga County, where Syracuse is located is ranked number six, and Westchester County, where Yonkers is located is ranked number 181, a reflection of the county’s proximity to NYC.
- \* The national average for RPT as a percentage of home value is one percent, while the median home price is \$194,300. For Erie County that means, residents pay 1.5% more in taxes as a percentage of their home’s value. Additionally, Erie County residents have home values \$82,300 less than the median national home values.
- \* For NYS, every county outside NYC is above the national average level of one percent of RPTs as a percentage of home values.
- \* Housing prices across the state tend to be lower than national median home values, as well as more rural, necessitating higher tax rates to raise the same amount of revenue.

Chair Kolkmeier asked how the assessed value of homes in Buffalo compares with the rest of Erie County. Mr. Kelly replied that there is significant disparity between the median assessed values, although the exact amounts are not on hand at the moment.

Director Arthur questioned the slide which depicted the median home values in Niagara County as lower than those in Erie County, given the number of high priced homes in municipalities such as Lewiston. Additionally, Erie County is much larger than Niagara County. The physical size of the counties needs to be taken into account.

Director Mertz asked how confident staff was with the accuracy of the data. Mr. Kelly replied that staff was very confident as the data was obtained directly from the various assessment offices and verified.

**Real Property Tax (as a percentage of household income)**

- \* In Erie County, Buffalo’s home county, residents typically pay equal to 4.7% of their income in property taxes, good enough for 69th place nationally, out of 788 counties.



- \* In Monroe County, Rochester's home county, residents pay 5.6% of their incomes in property taxes (42<sup>th</sup> nationally), In Syracuse's home County of Onondaga, resident's pay 4.7% (66<sup>th</sup> nationally).
- \* The national average for median home income is \$63,059, \$3,172 more than in Erie County, while nationally, residents typically pay just 2.9% of their incomes to RPT, fully 1.8% less than residents in Erie County.
- \* Every county outside of NYC is above the national average for percent of income spent on RPT.

### **Tax-exempt Property**

- \* Buffalo is amongst the cities with the lowest amount, or least tax exempt property at 30%. Both Rochester (29%) and Springfield (23%) have less tax exempt property than Buffalo.
- \* At the high end of the spectrum is Syracuse at 49% and Albany at a whopping 65% exempt property. Albany has an extremely high amount of tax exempt property largely due to the presence of the State government in the Capital. Fortunately, for Albany's sake they realize additional revenue from the state in other forms and receive PILOT revenue from some of its exempt properties.
- \* In Syracuse's case, the reasons include:
  - Four tax exempt hospitals;
  - Syracuse University's large presence;
  - Local government owned facilities, particularly county owned facilities, such as sewer and water management facilities, convention center, and the war memorial. It is worth noting that many of these cities charge these tax exempt properties for services, in the form of PILOTs, special district charges and special assessments that produce revenue for their host cities. Typical types of charges include: lighting, garbage, user fees, water and sewer, boarding and maintenance, inspection fees and so on. These charges produce varying degrees of revenue for each of the cities, depending upon how they are assessed and how comprehensive they are.

Director Giardino asked if the source of the information was based on published data. Mr. Kelly affirmed that it was, and asked Senior Analyst Mr. Bryce Link to address the Board and elaborate.

Mr. Link affirmed that the source was the American Community's Survey, a division of the United States Census Bureau. The final report was compiled by the Tax Foundation, a non-partisan Washington-based think tank.

### **Vacant Housing**

- \* Buffalo has the most vacant housing units out of the cities included in this study at 32,647, fully 6,009 more vacant housing units than the next closest city, which is Pittsburgh with 26,638. While the size of the city may play a role in the amount of vacant housing units, it is not likely the only factor driving vacancies.
- \* This is significant because some studies suggest that such measures affect municipal revenues, as well as many components of real property taxes.

The City of Buffalo compares favorably in some categories, such as percentage of tax exempt property, median real property taxes paid on homes as compared to other areas in NYS, and historic state aid per capita. However, in other areas Buffalo has structural problems such as the depth of its vacant housing unit problem and the lower median value of its housing stock.

Mayor Brown took the opportunity to discuss the Administration's "Five in Five" program which addresses the vacant housing situation. The City is using a myriad of funds sources including Federal, State, local as well as private funding to demolish one thousand vacant homes a year for the next five years. The removal of blighted structures that are unsalvageable allows the City to reallocate resources in other necessary areas such as police and fire that are dedicating serious time to this problem.. Addressing the vacant housing issues helps the City advocate for greater State Aid and is one of the reasons for Buffalo needing more State Aid than other communities. Regarding the City's percentage of sales tax revenue, he noted that Buffalo receives a smaller percentage of sales tax from the County than Buffalo's peer cities. This disparity has existed for a long period of time. If Buffalo received the same amount of sales taxes that Rochester receives, there would be no fiscal crisis.

#### **Parallels from BFSA's August presentation**

- \* The City of Buffalo compares favorably in some categories, such as percentage of tax exempt property, median real property taxes paid on homes as compared to other areas in NYS, and historic state aid per capita.

Mr. Kelly requested that Mr. Link continue the next portion of the presentation.

Mr. Link presented the following:

#### **State Budget Crisis**

- \* Based on the State's mid-year budget update, revenues are projecting down nearly 6 percent, or over \$3 billion from the prior year.
- \* At the same time disbursements or expenditures are projecting up over 12 percent, or nearly \$7 billion dollars from the prior year.
- \* This budgetary imbalance is projected to create budget deficit of over \$12.5 billion dollars at fiscal year ending 2009-10 (Without any changes to the current fiscal plans).
- \* It is reasonable to assume that such budgetary deficits will have adverse effects on local government assistance from the state.

#### **Spending Growth**

- \* Grants to local governments are expected to grow by over 12 percent, or by nearly \$4.7 billion.
- \* Of the grants to local governments, local school aid is expected to grow by nearly \$2.2 billion, also by over 12 percent, and Local government assistance, which is primarily AIM, is budgeted to grow by nearly \$170 million or approximately 14 percent.

- \* Local government assistance, which is primarily AIM, is budgeted to grow by nearly \$170 million or approximately 14 percent.
- \* The state operations category, which is basically departmental spending, is expected to grow by nearly 10 percent.
- \* The general state charges, which is employee and retiree benefits included health care is expected to grow by over 17 percent.
- \* Transfers to other funds, which is debt service and capital improvements, is expected to grow by nearly 12 percent.
- \* These last three areas are all difficult to cut at the state level, and even if the state were able to hold funding at 2008-09 levels there would still be a nearly \$6.7 billion dollar hole to plug.

#### **Governor's Proposed Cuts to AIM**

- \* Under the current law, Buffalo was to receive an increase of \$12M between the CFY and 2009-10. Per the Governor's recent proposals, CY AIM would be reduced by approximately \$2M, and the 2009-10 Aid would decrease to \$169M. Year to year that is a reduction of \$3M, but from what is currently in the 4-year plan that is a reduction of \$15M.
- \* All municipalities within NYS will be reduced per the current plan.

#### **Governor's Proposed Cuts to School Aid**

- \* Savings would be achieved by slowing the growth of formula-based School Aid and making targeted reductions in certain categorical programs.
- \* **Proposed Actions:**
  - Proposed actions would reduce the growth in School Aid in the 2008-09 School Year by \$836 million, primarily through reductions in formula-based School Aid.
- \* **Reduce Formula-Based Aid**
  - Reductions of state aid to school districts, ranging between 3 percent and 10 percent for individual districts. Consistent with the principles underlying School Aid, the level of reductions would be based on each individual school district's educational needs and their fiscal capacity to meet those needs. Measures used to allocate the percentage reduction include school district wealth, concentration of at-risk students, and residential property tax burden.
  - Buffalo would receive a reduction of 3%, going from current year \$590M down to \$574M a decrease of \$15.7M. Rochester would be reduced by 3% or \$12.6M; Syracuse is reduced 3% as well by \$7.7M; and Yonkers is reduced by 4% or \$8.8M.
  - Based on these potential scenarios, it is easy to see the how cities, and particularly Buffalo could be adversely affected not only next fiscal year, but also in fiscal years, two or three years down the road.

Chair Kolkmeier thanks Mr. Kelly and Mr. Link for the information. He noted the State Legislature needs to act on the Governor's proposals. He asked Mr. Link to provide the Board with an update on Police and Fire Departments overtime expenditures.

### ***Overtime Expenditures***

Mr. Link gave a presentation that provided the following material:

#### **\* Police Overtime**

- Through the end of October, which is the first 8 pay periods of the CFY, the City has disbursed \$2.9M in Police OT. The average disbursement being \$326K per pay period, if OT remains at that rate for the remaining 18 Pay Periods Police OT will end the year at \$9.6M, which is \$2.4M more than what the City originally budgeted at \$7.1M.
- The City's current projection is \$2.8M over budget.

Director Mertz asked whether there is expected seasonality in overtime costs. Mr. Link affirmed that there was, as the summer months tend to see increase in overtime costs.

Director Townsend asked if the bulk of the overtime is paid to uniformed officers rather than civilian employees. Mr. Link affirmed that it is, although Report Techs do have a level of overtime as well.

Chair Kolkmeier pointed out that the numbers as shown are very close to last year and questioned what would make anyone think that the full year numbers would be any different from last year, which would put them substantially over budget

- **Overtime Actuals** – Overtime Actuals for 2007 and 2008, a year to year increase of \$2.3M. The adopted budget of \$7.1M is \$1.5M less than last year's Actuals.
- Comparing actual disbursements through the first 8 pay periods of the CFY with last year, and you will see that Police OT is approximately \$60K lower this year than it was last. BFSA's projections are conservative, and do not take into account additional Police Officer classes at this time-since they will be undergoing training and will not be on the street to help alleviate the manning shortage. It does however include the continued retirement of Police officers at approximately 20 per year.
- Actual overtime hours worked and the number of overtime hours through the seventh pay period of the current fiscal year. The amount of overtime hours has decreased by roughly 3,500/hours compared to last fiscal year.
- The previous 3-years of actuals for Police overtime, doubling between 2006 & 2007, growing by an additional \$2.4M in 2008 and currently projected to end the CFY at \$9.6M.
- The number of OT hours worked by fiscal quarter with the number of total FTE's at the end of the quarter going back to 2005-06. It should be pointed out that it appears that OT has decreased in the Current years first quarter by roughly 11,000-the reason the decrease is so large is that the prior fiscal year had 7 pay periods through the first quarter where as the CFY has 6 pay periods-it is a timing issue. The FTE's are both uniform and non-uniformed employees.
- At the end of the first quarter, there were 944 FTE's; 800 uniformed and 144 non-uniformed, which is comparable to the first fiscal quarter of 2005-06, 788 uniformed and 153 non-uniformed. The amount of OT hours has increased by

150%, yet staffing is relatively the same. If OT continues at the current rate, and reaches \$9.6M; that would be roughly \$10,120/per person in OT.

Chair Kolkmeier, Vice Chair Townsend and Director Norwood asked several questions relative to police overtime and the size of the force. The numbers appear to reflect OT growing as the size of the force shrinks and there were questions whether the lower work force offsets the increase in OT. Mr. Schmidt asked about the increase in recent OT numbers when the staff numbers are increasing.

Buffalo Police Department Chief of Staff Joseph Strano addressed the Board. He provided the following: the total overtime hours worked has not changed. The number of officers is now close to 800. The new hires count in the overall number but have not been counted in the mix for manpower and OT as they are still in the training period and cannot operate as full police officers. Starting October 6<sup>th</sup>, the overtime numbers are expected to decline as the new hires are now past the interim period. He also noted that new officers are really only catching up for retirements and the force should appear stable over time.

Buffalo Police Department Commission H. McCarthy Gibson provided additional detail pertaining to minimum staffing levels for the various districts as well as the difference between uniformed and non-uniformed employees and pointed out that civilian staff has relatively low overtime rates. Minimum staffing is an administrative call and at this time a district typically is 8 officers and day shifts have been recently increased to 10 in some district.

Director Mertz asked if the Department performed an analysis of hours “paid but not worked.” Finding that the analysis had been done, he asked the Commissioner what the trend line is.

Ms. Townsend, Ms. Johnstone, Mr. Norwood made follow up questions as to what would be included in the paid not worked report.

Mr. Strano stated replied that the Department would submit the data. He and Commissioner Gibson also mentioned the OT that is paid by grants rather than the general fund.

Chair Kolkmeier noted that the bulk of the overtime goes to those with seniority and is “pensionable”, whether it is general fund or grant funded.

\* **Fire Overtime**

- Through the first 7 pay periods, the City has disbursed \$3.6M in OT, at a rate of roughly \$521K per pay period. If the Fire department maintains that rate, they are projected to finish the year at \$11.8M which is \$4M more than the adopted budget.
- The City currently projects the Fire dept to finish \$4.2M over the adopted budget.
- Overtime actuals for 2007 & 2008; as well as overtime disbursements through the first 8 pay periods for the CFY compared to 2007-08. Currently overtime is \$600K ahead of where it was last year at the same pay period. The adopted budget for overtime is \$7.9M, leaving \$4.3M available for overtime

disbursements. The last bar on the chart are the current YE projections at \$11.8M, which is \$4M over budget.

- The last three years of actuals, and the current year projections. Fire OT has grown on average 24% over the past three years.
- The amount of OT worked in hours through the seventh pay period. Compared to last year, OT has increase by 2,300/hrs.
- A breakdown of the number of full time employees by Fiscal quarter and the number of OT hours worked in that quarter. The fire dept had 6 pay periods through the first fiscal quarter compared to 7 pay periods in the other three fiscal years. As was expected, per minimum manning, as the number of FTE's decreased the number of OT hours increases. In 2005-06 fourth quarter, the Fire Dept had 768 employees which is 20 less than the started the year at and had decreased the number of OT hours worked by 27K/hours. A similar trend occurs in the 3<sup>rd</sup> quarter of 2006-07 where there are 748 full time employee's, 40 less than in first quarter 2005-06, and OT hours are down by 23k/hours.
- Overtime is driven by multiple factors, including that a large portion of the force has maxed out or are near maxing out the amount of sick time they can bank, the fact that there is no disincentive to not call in. Currently OT goes to the most senior members of the force. The current situation will not improve in the near future, since the next class of firefighters is slated to begin training in March and would not be in the field until May/June-it is projected that the City will be bringing on an additional 35 uniformed members, but will lose approximately 20 for a net gain of 15.
- If overtime continues at the current rate, and reaches \$11.8M; that would be roughly \$16,500/per person in overtime.

Director Norwood asked a question relative to fires in vacancy homes. Fire Commissioner Michael Lombardo addressed the Board and made the following comments:

- 40% of serious structural fires historically occur in vacant homes,
- 45% - 50% of serious structural fires are attributed to arson,
- Relative to overtime, the major driver is the 80 vacant positions coupled with minimum staffing requirements;
- The minimum staffing need is 165 employees per shift at full staffing; minimum staffing is 130.
- Fire is under court and U.S. Justice Department oversight for recruitment and will not be able to have a class until the spring. It takes a minimum of 14 weeks to train a class and until the new class is ready, OT problems will continue.
- The fire department has closed 7 fir companies in the last 7 years while the work has increased by 50%. Demolitions are a big help to the fire department as many of the fires occur in vacant buildings.
- Average response time is 2 minutes and 36 seconds.

Director Mertz requested additional information relative to how minimum staffing is determined. He asked if the minimum level of staffing is indexed on the City's population. Commissioner Lombardo replied that minimum staffing is 130 persons every day, including two shifts. The

level in not indexed toward population. Inversely, as the population has declined, the need for fire services has increased because of the vacant housing.

Mayor Brown took a moment to laud the recent accomplishments of both the Fire and Police Departments. The surveillance cameras recently implemented with the support of the BFSA were instrumental in the arrest of those responsible for the damage.

### **BFSA Issues**

#### ***Amendment to the Contract Approval Process***

Chair Kolkmeier introduced the amended Contract Approval Process memo. He stated that, at the last meeting, an amendment to the contract approval process that would enable any Director to stop the process of approval until fully satisfied with answers to his/her questions. At that time the matter was tabled to examine additional changes. The staff has polled the board for their further comments and is presenting a newer version that incorporates various inputs. Copies of the new process memo were circulated a few weeks ago for your review.

He requested a motion to approve the memo. Motion by Townsend, second by Mertz.

Director Arthur suggested the following amendments:

Page 1, paragraph 5 –

**Original language** – “Going forward staff will ask (typically through email) if the response provided to the director’s question or concern is satisfactory, and the director will now have two additional business days to reply as to whether the staff response is considered satisfactory.”

**Proposed new language** – “Going forward staff will ask (typically through email) if the response provided to the director’s question or concern is satisfactory.”

Director Townsend argued that the language should remain as the time frame is necessary. Chair Kolkmeier echoed these sentiments and Director Arthur agreed to go along.

Page 1, paragraph 6 –

**Original language** – “Steps to resolve the contract concerns may include: speaking with the individual director by phone, setting up a meeting or conference call between the individual director and members of the City or covered organization to attempt to resolve the issues, or ultimately taking the contract in question to the full board for a vote at the next regularly scheduled BFSA meeting.”

Director Arthur recommended “Steps to resolve the contract concerns may include: speaking with the individual director by phone, setting up a meeting or conference call between the individual director and members of the City or covered organization to attempt to resolve the issues. **A director may record a no vote on a specific contract if he or she is ultimately not comfortable or satisfied with efforts to alleviate his or her concerns.**”

Directors Norwood and Mayor Brown lent support to his amendment.

Motion to accept the amendments by Arthur, second by Brown. Approval 9-0 to accept the Contract Approval Process as amended.

**RESOLUTION NO. 08 -48**

**AMENDING THE APPROVAL PROCESS FOR CONTRACTS, SETTLEMENTS OR OTHER OBLIGATIONS BINDING OR PURPORTING TO BIND THE CITY OF BUFFALO AND OTHER COVERED ORGANIZATIONS**

WHEREAS, Chapter 122 of the Laws of 2003 as amended by Chapter 86 of the Laws of 2004 authorizes the Buffalo Fiscal Stability Authority (“BFSA”) to review and approve or disapprove contracts or other obligations binding or purporting to bind the City or any covered organization; and

WHEREAS, Chapter 122 of the Laws of 2003 as amended by Chapter 86 of the Laws of 2004 permits the BFSA to review and approve or disapprove the terms of any proposed settlement of claims against the City or any covered organization in excess of \$50,000; and

WHEREAS, in order to carry out the mission of the BFSA, the BFSA reviews contracts or other obligations in excess of \$50,000, though the BFSA Act provides no limitation for contracts or other obligations; and

WHEREAS, the process provided for in BFSA Resolution 06-28 authorizes the BFSA Chair and Vice Chair, and, in the event one of them is not available, the BFSA Secretary, to approve contracts or other obligations; and

WHEREAS, the process provided for in BFSA Resolution 07-33 authorizes the BFSA Deputy Treasurer to approve contracts or other obligations in the event that the Chair, Vice Chair, or Secretary is not available; and

WHEREAS, pursuant to BFSA Resolution No. 06-28, the BFSA adjusted the contract review process to allow for greater input from other BFSA Directors; and

WHEREAS, there is now a desire to adjust the process outlined in Resolutions 06-28 and 07-33, to allow for additional approving authorities and additional time for other BFSA Directors to comment, ask questions and raise concerns on contracts exceeding \$200,000;

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority (BFSA) hereby authorizes the following process for the approval of contracts or other obligations binding or purporting to bind the City of Buffalo or other covered organizations, including settlements of claims and hiring freeze waiver forms. The process shall be as follows:

1. Any contract, settlement or other obligation binding or purporting to bind the City or covered organization with a value of \$50,000 or more will be reviewed and approved by the BFSA before it becomes effective. The request must be in writing; from the Mayor on behalf of the City, from the Superintendent or Board President on behalf of the School District, from the Executive



Director or Board Chairman on behalf of the Buffalo Municipal Housing Authority and the President or Chairman of the Buffalo Urban Renewal Agency. Such request shall be submitted to BFSFA with a completed standard contract approval request form, as such may be developed by the BFSFA Staff, and shall include all required authorizations prior to submission to the BFSFA, along with any additional supporting information that may be required. No request will be considered absent a written request and completed form.

2. Upon meeting the above conditions, all contracts, settlements or other obligations binding or purporting to bind the City or covered organization will be reviewed by BFSFA Staff. Regarding those with a value of \$50,000 or more but less than \$200,000, the BFSFA Staff will make a recommendation regarding the request to the BFSFA Chair and Vice Chair. If one of them is not available, then the Secretary and in his absence a member of the BFSFA Budget, Finance and Audit Committee will be an approving official. With the concurrence of two of the above mentioned Directors, the request will be considered approved. Failure to gain two Director approvals shall be deemed disapproved. BFSFA staff will then notify the requesting organization in writing that their request has been approved or disapproved. Disapproved requests can be resubmitted with additional information to support reconsideration or the matter can be referred to the entire BFSFA Board for their consideration. Upon the written confirmation of the approval of two Directors, the request is deemed approved. There will not be a vote to affirm the decision by the full BFSFA Board, but the written approval will be provided to all members of the BFSFA Board for their information.

3. Any contract, settlement or other obligation binding or purporting to bind the City or covered organization with a value of \$200,000 or more must meet the same conditions as above, but will be submitted for review and comment to the entire BFSFA Board for a period not to exceed two business days prior to approval by the two designated approving Directors. Notice of the approval shall be provided at the next scheduled Board meeting.

4. All questions raised by Directors on contracts exceeding \$200,000 will promptly be addressed by staff, and staff will ask - whether the response provided to the Director's question or concern is satisfactory, and the individual director will now have two business days to reply if the staff response is considered satisfactory. If the response is deemed unsatisfactory, the approval process for the contract in question will stop, and staff will work to resolve the concern in a timely fashion. Steps to resolve the contract concerns could include: speaking with individual directors, setting up a meeting or phone conference between the individual director and members of the City or covered organization to attempt to resolve the differences, or ultimately taking the contract in question to the full board for a vote at the next regularly scheduled BFSFA meeting. Additionally, staff will provide all directors a copy of any questions raised by an individual director, as well as the answer(s) to his or her question(s).

5. All labor-related items regardless of amount, including collective bargaining agreements, memoranda of understand/agreement and negotiated settlements to grievances will not be eligible for expedited review and must be submitted to the BFSFA Board for review and approval at the next regularly scheduled Board meeting.

BE IT FURTHER RESOLVED, that BFSA contract approval processes outlined in Resolutions 06-28 and 07-33 are hereby superseded by the process outlined herein this resolution.

This Resolution shall take effect immediately.

Approved November 5, 2008.

**Contract Approval – Destro Brothers**

Chair Kolkmeier informed the Board that the City had submitted a change order to the contract with Destro Brothers which needs approval by the full Board. He also indicated that the Board needed to address concerns with the change raised by Director Arthur. Further developments after the change order was submitted were presented by the Department of Public Works which withdrew the request for \$213,000 in costs for perimeter fencing and entry walls. Bids for these projects will be requested this spring.

Given these changes, the pending approval will now be approximately \$69,400. These costs have been rationalized and validated by the engineering firm under contract with the City to supervise this project.

Motion to approve by Director Mertz. Second by Director Arthur. Vote 9-0 to approve.

**RESOLUTION NO. 08 - 49**

**AUTHORIZE CITY OF BUFFALO TO ENTER INTO A CONTRACT WITH DESTRO BROTHERS**

WHEREAS, Chapter 122 of the Laws of 2003 as amended by Chapter 86 of the Laws of 2004 permits the Buffalo Fiscal Stability Authority (“BFSA”) to review and approve or disapprove contracts or other obligations binding or purporting to bind the City or any covered organization; and

WHEREAS, Chapter 122 of the Laws of 2003 as amended by Chapter 86 of the Laws of 2004 permits the BFSA to review and approve or disapprove the terms of any proposed settlement of claims against the City or any covered organization in excess of \$50,000.00; and

WHEREAS, in order to carry out the mission of the BFSA, the BFSA will review contracts or other obligations in excess of \$50,000, though the BFSA Act provides no limitation for contracts or obligations; and

WHEREAS, the BFSA will review contracts or other obligations in excess of \$50,000, but will require review by the full BFSA Board when the contract or other obligation is valued at \$200,000 or more; and

WHEREAS, the Mayor and other City officials submitted a contract or obligation for approval on October 29, 2008 to BFSA, and have signed the BFSA Remittance Approval Request Form

("RARF") in which they indicate that there are sufficient funds available for such item; and

WHEREAS, BFSA Staff have reviewed such items and the RARF and recommend approval of this contract or obligation; and

WHEREAS, the Mayor and other City officials submitted a change order retracting the request of \$213,000 of the original \$283,334.45; and

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority approve and authorize the City of Buffalo to enter into a contract and obligation as listed below:

1. Destro Brothers – work associated with utility/light standard placement \$70,334.45

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This Resolution shall take effect immediately.

### **Governance Committee Meeting Summary**

Chair Kolkmeier asked Director Townsend to provide a recap of the Governance Committee meeting which was held earlier that day

Director Townsend informed the Board that the Governance Committee recommended adoption of the revised Travel Policy with changes made by the Governance Committee. Changes included adding the word "directors" to the paragraph addressing the uses of rental cars by employees. Additional changes included adding a daily maximum amount for meal reimbursement. The maximum would be ten dollars for breakfast, fifteen dollars for lunch and twenty-six dollars for dinner. There was a change to the list of items not eligible for reimbursement to include alcohol and travel insurance. And the final change was to the phrase "if a director or employee chooses to travel by an indirect route" to read "For example, if a director or employee chooses to travel by an indirect route".

Chair Kolkmeier requested a motion to approve the Travel Policy with changes made by the Governance Committee.

Motion by Arthur, second by Townsend. Vote 9-0 to approve.

### **RESOLUTION 08 –50**

#### **AMEND TRAVEL POLICY**

Whereas, The Public Authorities Accountability Act of 2005 Imposes on the BFSA Certain Requirements, Including, Among Others, Requirements for The Adoption Of Various Internal Policies, Including A Travel Policy; And

Whereas, The BFSA Board of Directors Approved A Travel Policy by Resolution No. 08-45 On September 19<sup>th</sup>, 2008; And

Whereas, At The Same Meeting The BFSA Staff Was Instructed To Make Some Changes To The Approved Policy And To Present A New Policy Document At The Next Board Of Directors Meeting; And

Whereas, A More Detailed and Comprehensive Policy Has Been Presented To And Discussed Among The Present Members Of The Board;

It Is Therefore Resolved, That The Travel Policy As Presented Shall Be Adopted And Replace The One Adopted At The September 19, 2008 Meeting.

This Resolution Shall Take Effect Immediately.

Approved November 5, 2008

Chair Kolkmeier pointed out that first quarter financial were included in the Board Book and asked if there were any questions.

### **Discussion on Approval of Meeting Schedules and Revision of Bylaws**

Director Arthur interrupted Chair Kolkmeier's request for a motion to adjourn the meeting. He then informed the Board that he would like to make a motion to have the Board approve the remaining meetings scheduled for 2008 and the 2009 Board meeting schedule that was circulated by BFSA staff and appears on the website.

Director Johnstone recommended tabling the decision until the December 17<sup>th</sup> meeting and supported Director Arthur's initiative. She noted that not properly scheduling meetings affects the Board's ability to properly perform their duties and does not give BFSA staff ample lead time to perform analyses prior to contract reviews. Director Johnstone asked for the Mayor's and Dr. Williams' input regarding the process for issues that surface or decisions needed between Board meetings.

Director Arthur suggested counsel from Harris Beach review the section of the by-laws on special meetings. Legal counsel, W. Smith, confirmed existence of language in the by-laws granting the Chair the authority to call special meetings with a three day notice. Director Johnstone indicated the three day notice was insufficient given the Directors' schedules. Director Arthur noted that the Board could change the three day notice.

Director Arthur recommended that the Governance Committee review the section of the by-laws related to scheduling meetings and expand the language to cover committee meetings and the cancellation of meetings.

Director Townsend expressed her confusion given the numerous meeting date changes which, according to her understanding, were to accommodate the Mayor's request for the Board to approve the contract at this meeting.

Director Arthur reiterated that the by-laws do not give the Chair the authority to cancel meetings.

Legal Counsel Smith added that since the by-laws are silent on this point, the common practice is to rely on common law and case law provisions. In the area of Corporate Law the Chair has the right to cancel and reschedule meetings.

Mayor Brown indicated that the rescheduling was not at his request and informed the Board that his preference would have been to maintain the original meeting date. He also expressed his willingness to approve the meeting dates as submitted but would like to retain the flexibility to schedule or reschedule meetings to take up issues that are time sensitive.

Director Mertz noted that the Board has responded, in the past, to contract approval requests that involved timing constraints in order to complete analyses to support the Mayor's request for Board review at the upcoming meeting. He also reiterated Director Johnstone's observation that BFSA staff analysis and pre-meeting reviews take considerable time and must be properly performed to make informed decisions.

Director Norwood repeated the suggestion to have the Governance Committee review this matter because of its significance.

Chair Kolkmeier called for a motion to adjourn the meeting.

Mayor Brown asked that close scrutiny be given to the amount of time BFSA staff requires to evaluate a contract given the size of the BFSA staff compared to the City fiscal staff.

Mr. Mertz noted that it is difficult to analyze a contract during negotiations.

Ms. Mitchell responded that the full disclosure of all the costs and anticipated savings related to the fire contract was not provided until the day after the contract was announced. The BFSA staff does a thorough analysis of the numbers and assumptions with City staff and to put a presentation together that hopefully anticipates most questions that will be asked by the board and is sufficiently complete to allow a decision when presented.

### **Closing Remarks**

Chair Kolkmeier requested a motion to adjourn. Motion to adjourn by Norwood, seconded Townsend. Vote 8-1 (Arthur dissent) to adjourn the meeting at 2:15 pm.