

**MINUTES
BUFFALO FISCAL STABILITY AUTHORITY
FRIDAY, DECEMBER 12, 2008**

The following are the minutes of the Buffalo Fiscal Stability Authority (BFSA) meeting held on Friday, December 12, 2008, at the Buffalo & Erie County Central Public Library.

Directors Present: Arthur, Brown, Collins, Giardino, Johnstone, Kolkmeier, Mertz & Townsend

Director Absent: Norwood

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

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

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.

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 November 14, 2008, meeting minutes and asked for a motion to approve.

Motion by Townsend, second by Johnstone.

Director Arthur proposed the following new language:

*** Page two of twenty-one, paragraph one [revised language for the September 19, 2008]**

Original Language – Director Arthur declined by stating, “I’m putting it in your hands.”

Proposed New Language [November 14, 2008] - Director Arthur **declined** by stating, “I’m **putty** in your hands.”

Final New Language [December 12, 2008] - Director Arthur **stated**, “I’m **putty** in your hands.”

*** Page four of twenty-one, paragraph three [November 14, 2008]**

Original Language – “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 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.”

Proposed New Language - “Director Arthur asked whether they qualify for food stamps, SSI etc. and the answer was yes. **He also asked, “When did the Living Wage Agreement go to the Board of Education?”** The District was examining a Living Wage policy similar to the City’s. 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.”

Approval 8-0 to accept the minutes as amended.

RESOLUTION NO. 08-51

APPROVING MINUTES AND RESOLUTIONS FROM NOVEMBER 14, 2008

BE IT RESOLVED that the Buffalo Fiscal Stability Authority approves the minutes of its meetings of November 14, 2008, and ratifies and affirms resolutions numbered 08-46 through 08-50 that were approved November 14, 2008.

This resolution shall take effect immediately.

City of Buffalo

Collective Bargaining Agreement with Local 264

Chair Kolkmeier introduced a proposed collective bargaining agreement [CBA] between the City of Buffalo and a bargaining unit of AFSCME Local 264. He asked Executive Director Bertha H. Mitchell to summarize the proposed contract.

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

Introduction –

- * The City, through a series of negotiating sessions, has successfully reached a collective bargaining agreement with AFSCME Local 264. This union represents the City’s blue-collar workers, which currently totals about 565 budgeted employees.
- * The contract covers the period of July 1, 2002, through June 30, 2011, while the previous agreement covered the period of July 1, 1999 to June 30, 2002.
- * In reviewing this contract it should be noted that there are three different employee groups that make up the City’s blue-collar workers. The largest group of these employees is in the City’s General Fund, where there are 325 current employees. Additionally, there are 137 employees in the Enterprise Funds, which cover streets and garbage collection. Lastly there are 50 employees in the City’s Water Enterprise Fund.
- * Vacancies across the City’s three different groupings of these employees, total 53 (G/F = 42,

Water/F = 7, Enterprise/F = 4).

Details –

- * No wage or salary increases for the period of July 1, 2003 to July 1, 2006;
- * \$1,350 added to base salary, retroactive to July 1, 2007;
- * A 3.1% salary increase on July 1, 2008, coupled with a \$1,400 addition to salary base;
- * A 4.1% raise on July 1, 2009; and
- * A 4.15% salary increase on July 1, 2010. Collectively, the total costs for this contract including all of the City's blue collar workers, is estimated by BFSA at \$8.3 million over the contract period. Overall these add up to just over 20% total over the period of the contract

Structural Changes

- * All current employees will be placed on the lowest cost 204 health insurance plan at no cost to employees. Active employees will share 50/50 in the savings from this action. More expensive options remain, but such costs differences would have to be paid by the employee.
- * All new employees hired after January 1, 2009, will contribute \$170 for single insurance and \$470 for family health insurance per year. This contribution rate is equal to approximately 4.5% of the cost of health insurance and equates to about \$3.27 a week for single coverage, and about \$9.04 a week for family coverage.
- * The City will now have the ability to annually RFP for health and dental insurance providers, as long as the coverage remains identical. The City feels that active competition between health care providers will ultimately lower costs, but the amount of savings on a year-to-year basis is somewhat speculative.
- * All employees hired after January 1, 2009, who eventually retire from City service will have to contribute to their health insurance and current employees who retire with less than 20 years of service will have to contribute to their health insurance at various rates depending upon their length of service at the time of their retirement. Additionally, health insurance for new employees will increase yearly based on the increases from the health insurance provider.
- * Future retirees may be required to enroll in a Senior Product and savings could be expected from this contractual change, as the senior product is cheaper than the 204 health plan.
- * Personal leave for the City's blue-collar workers is being decreased by one day.
- * Beginning January 1, 2009, newly hired employees will no longer be able to earn up to 25 days of vacation a year, instead maxing-out at 20 days of vacation a year. In other words, new employees will earn less vacation time throughout their careers with the City. Additionally, new hires will only be able to bank up to 40 vacation days, versus the 50 that current employees can now bank.

Additional Contract Reforms Proposed

- * The union withdraws from the “steps litigation” and various other current legal actions. Additionally, fact finding arbitration will be avoided, which could have resulted in significant additional costs to the City.
- * The new contract increases the number of salary steps from the current five to seven steps, which in essence increases the time it takes for employees to reach the top salary increment.
- * Employees would give up paid wash up time, which is a paid 15 minute period at the end of each day. Over the course of a work year this concession equals to over eight additional days of pay per employee.
- * All new employees will be required to live in the City.

Additional Changes -

- * Employees will be subject to substance abuse testing.
- * Employees will be required to abide by the City’s employee handbook.
- * The probationary period has been changed to a term of not less than two months and not more than 12 months.

Effect on OPEB -

- * This contract has a positive effect on OPEB costs. Its positive effects will be very gradual in the early years. However, over time it could reasonably be expected that this contract will ultimately contribute to reducing OPEB costs for the City and its taxpayers through provisions like employee contributions to health insurance premiums and the switch to the less costly 204 health insurance plan.

Vacancy -

- * Vacancies have remained in the 9 to 10% range in recent years, currently at about 61 positions.
- * This total of 515 blue collar employees, would in effect set an employee ceiling that the City would maintain, allowing the City to use the salaries of the vacant positions to help off-set the cost increases of this contract.
- * These numbers would allow the City to maintain a small number of vacant positions that the City could fill in situations that required additional employees in the blue collar ranks.

Costs & Savings -

- * The total costs of this contract equal \$10.55 million for the general fund portion, while the savings total \$4.75 million, for a net cost of over \$5.81 million.

- * The impact of the projected savings from vacancies, as the City had originally intended to do, totals \$5.61 million. The net effect of this contract would equal \$200,000 for the general fund portion.
- * The actual cost of this contract for all three funds equals \$17.1 million, while the savings total \$8.54 million, for a net cost of over \$8.47 million.
- * When considering the projected savings from vacancies, as the City had originally intended to do, which total \$9.3 million, the net effect of this contract would equal \$830,000 on an all funds basis.

Mrs. Mitchell noted that the City had submitted a revised four-year plan the prior afternoon. The new funding proposal from the City shows how the City would cover the net costs of the contract (general fund only) without impacting the vacancy number. She asked for a representative from the City to summarize the revision for the Board.

Summary -

- * While the costs of this contract are sizable, they come with some concessions from employees. Management gains additional rights, in that employees will now be subject to provisions not previously part of a CBA with Local 264.
- * This contract does not come without risks, and while the contract has the potential for savings, the City is still facing the risks inherent in the contract assumptions but also from potential shortages in revenues.

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

Chair Kolkmeier requested a motion to approve the resolution. Motion by Brown, second by Arthur.

Vice-Chair Townsend offered the following amendment:

“The number of employees covered by this contract shall be capped at the employee levels assumed by the City in its originally submitted proposal to the BFSA. The savings from the originally submitted proposal resulted from 42 vacancies across the city’s blue-collar workforce. The BFSA will also review requests for additional personnel above levels originally submitted to BFSA in the proposed CBA”.

Director Arthur made a Point of Order stating that the amendment was not germane to the proposed resolution. Following some deliberation, both he and Mayor Brown asked for counsel's opinion on the matter.

Harris Beach legal counselor, Mr. Bill Smith, Esq., responded that, “All matters regarding the proceedings of the Authority are at the discretion of the Chair.” It is at the discretion of the Chair to determine if the amendment is germane or not.

Director Arthur expressed his opposition to this opinion.

Chair Kolkmeier summarized the procedural issues the Board was addressing as a motion with a second to approve the resolution and a motion for an amendment. Director Mertz seconded the motion to add the amendment.

Director Arthur stated that there was also a challenge to the amendment.

Mayor Brown registered his opposition to the amendment. Further, he stated that the City was not using vacant positions to fund the contract as provided. The City has proved the ability to fund the contract without using vacancies.

Director Townsend explained her rationale for offering the amendment. She stated that, if the positions currently vacant became filled, the cost assumptions provided to the Common Council and BFSAs would not be realized. It has been explained that the “loosening” of resources is partly attributed to a conservative approach toward filling positions. Recognizing this, it seems prudent to reduce the number of positions which can be filled. BFSAs were always been flexible toward staffing needs and can allow an expansion of positions in the future if warranted.

Mayor Brown thanked Director Townsend for her clarification of the amendment. However, he felt that it reinforced his argument that the amendment is not germane to the resolution. He asked Commissioner of Administration, Finance, Policy and Urban Affairs, Ms. Janet Penksa to further espouse the City’s position.

Ms. Penksa stated that there was a misunderstanding relative to the financial plan. With the amendment the financial plan can accommodate a potential filling of all of the vacancies. Even with a change of policy wherein all vacant positions were filled, the financial plan would still be in balance. She stated that the financial plan, as amended, can accommodate the filling of all vacant positions, if necessary. Further, the BFSAs’s enabling legislation allows for only one test for contract's approval or disapproval: Is the contract in balance with the Financial Plan? She stated that the contract is within the boundaries of the Financial Plan.

Ms. Penksa asked Director of Administration & Finance, Ms. Donna Estrich to provide further detail regarding the amended Financial Plan.

Ms. Estrich referred to the slide which depicted the revised four-year plan. The slide showed the City’s assumptions for savings/ costs of the proposed Local 264 contract along with the previously approved Local 650 contract as follows:

	Adopted 08-09 Budget	Projected 09-10 Budget	Projected 10-11 Budget	Projected 11-12 Budget
650 Contract-Savings/Cost	\$2.19 million	\$0.80 million	\$0.37 million	\$0.47 million
Surplus/Deficit	\$2.19 million	\$0.80 million	\$6.5 million	\$0.47 million
264 Contract Savings/ Cost	(\$1.02) million	(\$1.11) million	(\$1.67) million	(\$1.67) million

	Adopted Budget 2008- 09	Projected 2009-10	Projected 2010-11	Projected 2011-12
Revenue	\$435.01	\$446.67	\$463.29	\$468.67
Appropriations	\$435.01	\$446.67	\$457.16	\$468.67
650 Contract- Savings/(Cost)	<u>\$2.19</u>	<u>\$.80</u>	<u>\$.37</u>	<u>\$.47</u>
	\$2.19	\$.80	\$6.5	\$.47
Surplus/ (Deficit)				
264 Contract- Savings/(Cost)	(\$1.02)	(\$1.11)	(\$1.67)	(\$1.67)
1st Quarter Proj. Savings	\$1.02	-	-	-
Budget Adj.	-	\$.31	-	\$1.2
Surplus/ (Deficit)	\$2.19	\$0.0	\$4.83	\$0.0

Chair Kolkmeier asked whether or not the Local 650 & Local 264 contract savings contains the cost of vacancies. Ms. Estrich replied that the Local 650 Contract does while the Local 264 Contract does not. The latter was an attempt to placate the concerns of the BFSA Board over the issue of the vacancies.

Ms. Penksa referred to the slide. She stated that the method used is to show the actual occurrence for past quarters and then assume that all vacancies are filled for the remaining quarters of the fiscal year. As the first quarter of the fiscal year had past and had been reported in the gap sheets, they have real-time data to make the full year cost more accurate.

County Executive Collins elaborated. The material presented is a “worst-case” scenario, the cost of the contract if all vacancies are filled.

Director Arthur stated that not allowing for vacancies would remove a management tool afforded to the City.

Chair Kolkmeier stated that, by budgeting to fill all positions, the City is essentially over-taxing the citizenry. More funds are being raised in case the vacancies are filled. Since it is unlikely that the vacancies actually will be filled, the City obtains surplus funds which it did not need to collect from taxpayers.

Mayor Brown stated that the residential tax rate has been decreased each of the past few years. Even with the “worst-case” scenario with all vacancies filled, the contract still is affordable for the City.

Director Giardino stated that the debate had drifted from a review of the contract as presented into a philosophical discussion over proper municipal budgeting practices. The workers of Local 264 should not be caught up in this type of discussion. He asked the Mayor whether or not the 565 employees in the bargaining unit are sufficient to maintain quality service for the public.

Mayor Brown stated that it was. CitiStat allows for constant monitoring of staff performance and make changes if needed. The vacancies do not currently need to be filled. The availability of the open positions allows the City to make adjustments and improve services, if needed.

County Executive Collins stated that the charge of the Board should not take the Administration to task for budgeting “too conservatively.” This is the role of the voters.

Director Townsend stated that if the City was to be “maximally conservative”, it would remove positions that do not expect to be needed. The contract is fairly good for the City. It allows for some cost savings and restores some management rights. It does provide increases which are higher than the rate of inflation. However, given the extreme uncertainty of the economy, it is prudent to remove the vacancies.

County Executive Collins stated that [the final year of the contract] 2012 is “a long way off.” The community will have a larger population by this time. While the country is in a recession now, it will not last for the next four years. The Board should not micromanage the City.

Chair Kolkmeier noted that the two contracts, filling all of the vacancies, would have a net cost of about \$4.5 million to the City. Given this, the City’s surplus would be greatly reduced.

Mayor Brown stated that the City of Buffalo is budgeting the same way that other municipalities across the State budget.

Director Mertz stated that there is an obligation to the taxpayers to approve contracts which reflect the market of the area. This contract provides healthcare coverage which far exceeds that which the private sector provides.

Mayor Brown reiterated his support for the contract. He stated that the contract was fair to all parties, provided cost containment for the City, and provides increased compensation for the workers.

Chair Kolkmeier agreed with the Mayor that it is important for the City to find a way to give the workers a salary increase. It is disheartening that the workers are only contributing 5% toward their health insurance costs while their counterparts in Rochester, New York are paying significantly more. Still, the contract would be agreeable even with this low level of employee contributions if the vacancies were not being used to fund the contract. He called for a vote on the resolution.

Director Arthur canvassed the Board for their votes. The amendment to the resolution was disapproved 3-5 (Arthur, Brown, Collins, Giardino & Johnstone dissent). The resolution as originally submitted was approved 6-2 (Kolkmeier & Mertz dissent).

RESOLUTION 08-52

APPROVAL OF COLLECTIVE BARGAINING AGREEMENT

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 and AFSCME Local 264 ("Local 264") commenced negotiations in September 2007 and fully and completely bargained with respect to the terms and conditions of employment of union members; and

WHEREAS, Local 264 covers employees within the City of Buffalo's General Fund, Enterprise Fund and Buffalo Water Fund; and

WHEREAS, on November 19, 2008, the members of Local 264 approved an Agreement Amending the Collective Bargaining Agreement between the City and Local 264; and

WHEREAS: on November 25, 2008 the Common Council approved the Agreement amending the Collective Bargaining Agreement between the City and Local 264; and

WHEREAS, the City 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 salary increases in each year of the agreement, changes to management rights, restructuring of paid leave time, transition to the lower cost 204 health insurance plan, reduced future OPEB costs, health insurance contributions for new employees that extend into retirement, and requires all Local 264 employees to live in the City; and

WHEREAS, the agreement provides for the terms and conditions of employment for the period from July 1, 2002 through June 30, 2011 and supersedes any other terms and conditions for that period, including any changes due to contract, Interest Arbitration, judgment or otherwise, now in effect or hereinafter existing; and

WHEREAS, the City will pay for the increased costs of this collective bargaining agreement through the use of savings in current budget and four-year financial plan; and

WHEREAS, Local 264, under the terms of the proposed agreement, releases all claims asserted or which could have been asserted in the lawsuits set forth in the agreement as well as lawsuits not listed, and will execute stipulations of discontinuance, on the merits with prejudice, of all such litigation and not proceed with any pending or further appeals all as more specifically described in said proposed agreement, and

WHEREAS, the proposed agreement and its sources of funding is in all respects in accordance with the approved financial plan and is in compliance with the draft guidelines established by the BFSA for review and approval of collective bargaining agreements; and

NOW, THEREFORE, BE IT RESOLVED, that the BFSA hereby finds that the agreement between the City and Local 264 conforms to the City's budget and four year plan; and be it further

RESOLVED, the BFSA does hereby approve the aforementioned agreement between the City and Local 264, which is to be effective for the period from July 1, 2002 through June 30, 2011.

This Resolution shall take effect immediately.

Director Mertz asked the Mayor, "Is it necessary to pay healthcare for life for the next employee hired to Local 264?"

Mayor Brown responded that approving the contract today will facilitate a more positive environment in future negotiations with Local 264. The "wage-freeze" enacted by the Board created distrust amongst the workers. The contract is fair and future negotiations will not be as difficult.

Director Johnstone stated that BFSA has three charges. The first is to ensure that essential services are maintained. The second is to ensure that taxes are affordable. The third is to help make the City more self-sufficient and less reliant on State Aid. When reviewing the next range of contracts, the third standard must be examined by the Board.

BFSA Issues

BFSA 2009 Public Meeting Schedule

Chair Kolkmeier introduced the next item on the agenda. He stated that the Governance Committee had met earlier in the day and taken the following actions:

1. Tabled proposed revisions to the Bylaws; and
2. Approved a motion to send the 2009 meeting schedule to the full Board with the recommendation for approval.

He asked Director Townsend, the Committee's Chair, to further elaborate on the Committee's actions.

Director Townsend noted that there had been significant discussions regarding the timing of the Public Forum. The intent, as always, is to keep the Public Forum as cost-effective as possible while providing feedback on the budget to the Mayor and the Common Council. The Committee's recommendation is to approve the schedule as presented with the knowledge that the dates may be changed in the future to accommodate individual's schedules.

Motion by Arthur, second by Brown. Approval 8-0.

RESOLUTION NO. 08-53

ADOPTION OF A BFSA BOARD OF DIRECTOR REGULAR MEETING SCHEDULE FOR CALENDAR YEAR 2009

WHEREAS, the Buffalo Fiscal Stability Authority ("BFSA") was created by Chapter 122 of the Laws of 2003 to be a corporate governmental agency and instrumentality of the State of New York constituting a public benefit corporation to oversee the City of Buffalo's budget, financial and capital plans; to issue bonds, notes and other obligations, as defined in the Act; and to develop and implement financial plans on behalf of the City of Buffalo as necessary.

WHEREAS, it was necessary for the BFSA to adopt By-Laws to conduct its business.

WHEREAS, the BFSA approved the adoption of By-Laws by resolution No.03-01 adopted July 15, 2003 and updated the By-Laws by resolution No. 07-47 adopted September 24, 2007; and

WHEREAS, the BFSA By-Laws under Article III, Meetings of the Authority, allows the Directors to

schedule regular meetings of the Authority as the Directors determine necessary with regular meetings needing to be held at least quarterly; and

WHEREAS, the BFSA Directors have determined that adoption of a 2009 regular meeting schedule, including committee meetings and the annual BFSA public forum is in the interests of the Authority and other interested parties; and

NOW THEREFORE BE IT RESOLVED, that the BFSA approves the adoption of a 2009 regular Board of Director meeting schedule dated December 12, 2008.

This resolution shall take effect immediately.

New Business

Director Arthur introduced a resolution titled, "Reduce BFSA 2008-2009 Budget and 2009-2012 Four-Year Financial Plan by Fifteen Percent." He explained that the resolution would direct staff to come up with recommendations on cost-cutting measures to allow for a 15% expenditure reduction for the balance of the current fiscal year and four-year plan. This is deemed prudent, given the current economic climate.

Director Arthur made a motion to send the resolution to the Audit, Budget & Finance Committee. Mayor Brown offered a second to the motion.

Mr. Smith clarified that there is no need for a Board action to submit the item to the Committee. It can be submitted as presented without a vote.

Director Johnstone expressed concern with this suggestion. The Board should always look for ways to provide service as cost-effectively as possible. The Board has already cut personnel costs "by 20%" by eliminating one position. The Board will need to hire a new Executive Director in the coming year as Mrs. Mitchell has stated her desire to step down. While it is a good idea to reexamine costs, a 15% reduction seems arbitrary.

Chair Kolkmeier stated his support for reducing the budget by 15% as soon as the City, State and County cut their own budgets accordingly.

Director Arthur stated that these entities are already taking this action.

Mrs. Mitchell expressed her willingness to compile these suggestions for the Board. One caveat is the expense allocated toward legal expenses is difficult to predict and makes up 40% of the budget.

Director Arthur noted that as more and more contracts are resolved, the number of entities engaged in litigation against the City and BFSA diminishes which could lead to a lessening of the need for legal expenses. Mrs. Mitchell stated that unless all parties to a lawsuit withdraw, the lawsuit and its expenses go on.

Director Giardino stated that, as Chair of the Audit, Finance & Budget Committee, the issue will be taken up and all Directors will receive all of the information that the Committee reviews, as per usual.

Adjournment

Motion to adjourn by Arthur, second by Brown. Unanimous vote to adjourn the meeting at 2:26 PM.