

BUFFALO FISCAL STABILITY AUTHORITY
Meeting Minutes
Wednesday, July 29, 2009

The following are minutes from the Buffalo Fiscal Stability Authority's board meeting held on Wednesday, July 29, 2009, at the Buffalo & Erie County Central Public Library.

Directors Present: Arthur, Brown [proxy], Collins, Giardino, Johnstone, Kolkmeier, Mertz, Mesiah and Townsend

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

Additionally Present: A.V. Buzard, BFSA's outside legal counsel with Harris Beach, PLLC

Opening Remarks

The board meeting of the Buffalo Fiscal Stability Authority (BFSA) was called to order at 1:05 pm by Chair Kolkmeier. He welcomed City of Buffalo Commissioner of Administration, Finance, Policy and Urban Affairs, Ms. Janet Penksa, who was attending on behalf of Mayor Byron W. Brown, pursuant to §3853 of the BFSA Act. Additionally, he welcomed Ms. Jeanette M. Mongold as the newly hired Executive Director. He summarized the meeting's agenda as follows:

- A collective bargaining agreement (CBA) between the School District (the District) and the Substitutes United of Buffalo;
- A presentation by Dr. Kathryn Foster, Director of the UB Regional Institute, on Other Postemployment Benefits (OPEB);
- A brief review of the Buffalo Urban Renewal Agency's (BURA's) Annual Action Plan, as it had been submitted to the U.S. Department of Housing and Urban Development (HUD) for approval;
- A brief update on the City's police and fire overtime expenditures;
- A review of the recommendations of the Governance Committee which met earlier in the day;
- An executive session to discuss certain personnel matters (pursuant to Article 7, Section 105, "Conduct of Executive Sessions of the New York State Public Officers Law); and
- A resolution to honor Ms. Bertha H. Mitchell, former BFSA Executive Director.

He asked Secretary Arthur to call a roll of the Directors. Finding a quorum present, the meeting commenced.

Chair Kolkmeier introduced Resolution 09-28 to approve the June 10, 2009, board meeting minutes.

Motion by Mertz, second by Johnstone.

Director Arthur recommended the approval with the following changes:

Page 22 of 24, Vote on Resolution NO.09-26, Adoption of 2009-2010 and 2010-2013 Four Year Plan

Original Language – *Motion by Townsend, second by Mertz. Approval 6-1.*

Proposed New Language - *Motion by Townsend, second by Mertz. Approval 6-1 (Arthur dissent).*

Vote 9-0 to approve, as amended.

RESOLUTION NO. 09-28

APPROVING MINUTES FROM JUNE 10, 2009

BE IT RESOLVED that the Buffalo Fiscal Stability Authority approves the minutes of its meeting on June 10, 2009, and ratifies and affirms resolutions numbered 09-17 through 09-27 that were approved June 10, 2009.

This resolution shall take effect immediately.

School District Issues

Collective Bargaining Agreement (CBA)

Chair Kolkmeier introduced a CBA between the union covering the Substitute Teachers and the District. He asked Principal Analyst Bryce Link to provide a summary for the Board.

Utilizing a slide-show presentation, Mr. Link provided the following information:

CBA BETWEEN THE DISTRICT & THE SUBSTITUTE TEACHERS' UNION

Introduction

- The previous agreement covered the period of July 1, 2003 to June 30, 2004;
- This CBA covers the period of July 1, 2004, through June 30, 2012;
- There would be 777 current employees impacted (but varies as all substitutes do not work everyday).

Salary Increase Details

- The average pay increase is 3% to 3.7% each year, from July 1, 2009 to June 30, 2012.

Savings

- Elimination of per diem adjustment for substitutes that work five consecutive days - \$13 / day (estimated cumulative savings of \$1.15 million over 4 years).

Benefits Remaining Constant

- Paid snow days/emergency closing days when substitutes sign into assigned building and school is ultimately closed;
- \$750 incentive bonus per semester for substitutes working at least 70 days during a single semester;
- If a substitute is required to work in multiple facilities during a school day, he/she will be paid for transportation costs;
- Substitutes who work 30 days in preceding school year can participate in district health plan (must pay 100% of premium costs).

Additional Contract Reforms

- Three employee pay levels are reduced to two levels (Bachelor’s degree / Certified Teachers);
- The consolidation of pay steps I & II on the pay scale;
- Property insurance provision eliminated;
- New employee orientation and professional development now mandatory for substitutes;
- Language prohibiting August school year start has been eliminated.

CBA Costs/Savings

- \$259,000 – Average cost per year
- \$1.04 million – 4 year cumulative costs, 2009-10 through 2012-13

- \$287,000 – Average savings per year
- \$1.15 million – 4 year cumulative savings, 2009-10 through 2012-13

- Net 4 year savings of \$112,500

Four-Year Impact

	BASE	WTD AVG Increase	Savings	Net Impact	Savings
2009-10	\$6,500	\$6,722	(\$285)	\$6,437	(\$63)
2010-11	\$6,500	\$6,783	(\$285)	\$6,498	(\$2)
2011-12	\$6,500	\$6,766	(\$290)	\$6,476	(\$24)
2012-13	\$6,500	\$6,766	(\$290)	\$6,476	(\$24)
Four-Year Savings					(\$113.0)

Following Mr. Link’s presentation, Chair Kolkmeier requested a motion to approve the CBA.

Motion to approve by Arthur, second by Townsend.

Director Mertz expressed his satisfaction that there was neither retroactive pay nor any new healthcare liability with the contract. He asked whether or not there were any connections between this agreement and the Buffalo Teachers Federation's (BTF) CBA. He also asked whether the substitutes "only teach" and do not cover administrative functions. Mr. Link replied that both CBAs are independent of one another. Addressing the second question, he stated that the contract only covers substitute teachers, not those who would cover any administrative function.

Vote 9-0 to approve.

**RESOLUTION NO. 09-29
APPROVING THE SCHOOL DISTRICT LABOR AGREEMENT WITH THE SUBSTITUTE
UNITED OF BUFFALO NEA/NY (SU/B)**

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

WHEREAS, the City of Buffalo School District (the "School District"), a covered organization, has submitted to the BFSA a Memorandum of Understanding ("MOU") between the School District and the Substitutes United of Buffalo NEA/NY ("SU/B"); and

WHEREAS, the MOU covers the School District's substitute teachers; and

WHEREAS, the MOU formalizes terms and conditions regarding these employees; and

WHEREAS, the MOU provides for average annual increases in the range of 3.0 to 3.7 percent for the District's Substitute Teachers between July 1, 2009 through June 20, 2012; and

WHEREAS, the MOU consolidates three levels of substitute teacher pay into two levels of substitute teacher pay and consolidates the first two steps for the two remaining levels of substitute teachers and also eliminates continuous service pay for substitute teachers; and

NOW, THEREFORE, BE IT RESOLVED, that the BFSA does hereby approve the MOU between the School District and SU/B. This Resolution shall take effect immediately.

University of Buffalo Regional Institute Presentation on Other Postemployment Benefits (OPEB) Liabilities

Prior to the start of the presentation, Director Arthur asked why a presentation on the status of the Joint Schools Construction Board (JSCB) had not been included in the meeting agenda as he had requested at the June 10, 2009 board meeting. Chair Kolkmeier replied that the JSCB presentation will be provided at the September 30, 2009, meeting instead. It had been rescheduled as to not interfere with the OPEB presentation about to be presented.

Chair Kolkmeier introduced Dr. Kathryn Foster, Director of the University of Buffalo Regional Institute, to present on OPEB liabilities. She prepared a presentation for the Board entitled "The End of Local Government as We Know It?". He explained that the UB Regional Institute is an interdisciplinary research and policy center applying evidence-based analysis to issues affecting

regions. With a focus on the bi-national Buffalo Niagara region, the Institute leverages its expertise, capacities and partnerships to ask critical questions, inform, debate and guide change. Chair Kolkmeier provided a brief background on Dr. Foster’s work experience and biography.

Director Arthur requested written material to follow along with the presentation. Dr. Foster replied that material had intentionally not been provided yet as it has been her experience that information is assimilated at a higher level without providing written material during the presentation. Director Arthur stated, “Let the record note that I don’t think that it is fair.”

Dr. Foster began her presentation and provided the following information:

THE END OF LOCAL GOVERNMENT AS WE KNOW IT?

Introduction

- OPEB liability is the most significant challenge facing local governments and school districts today.
- Failure to address this challenge adequately will end local government “as we know it.”
- OPEB Defined - OPEB includes retiree benefits other than pension (e.g., health, dental and life insurance).
- Retiree healthcare benefits were a bargain entered into by many area public entities in past years. It was a means to resolve contract issues that, at the time, did not hold the weight that it holds now.

OPEB Cost Drivers

- Aging workforce
- Increasing life expectancy
- Rising health care costs

The Scope of the Problem

- \$1.5 trillion unfunded OPEB liabilities nationwide
- \$558 billion promised to all state workers
- New Jersey owes \$69 billion
- New York and California - \$50 billion each
- Local governments – Approximately \$1 trillion, although this number is not yet known as not all governments have reported their OPEB liabilities yet

Current Response

- Local governments currently are responding on a “pay-as-you-go” basis, making annual payments that are equal to the bill received from the insurance company in that year for the current and retired employees. On this course, payments will and have begun to escalate rapidly as retirees grow in number, live longer, and healthcare costs increase annually.
- As time goes on, retiree healthcare costs will encompass a larger and larger portion of total budgetary expenditures. Discretionary funds will be “squeezed-out.”
- GASB 45 (Governmental Accounting Standards Board) has required entities to include actuarial accounting of OPEB liabilities in order to receive a “good-housekeeping seal of approval.”

How Big Is the Local Government's Burden?

- The nine largest local governments in Western New York (by revenue) have an estimated 30-year unfunded liability of \$3.7 billion.
- The 30-year unfunded liability of each government varies widely, reflecting diverse approaches to employee compensation.
- All paid less than half of what they should have last year to meet their 30-year liabilities.
- Regionally, the City of Buffalo School District, Erie County and the City of Buffalo have the highest Annual Required Contributions (ARCs) to meet their 30-year liabilities.

How big is the Burden for City of Buffalo Residents?

- On a per-person basis, City residents are liable for postretirement benefits of retired City, District and County employees as follows:

City	\$3,468
District	\$3,968
County	\$806
Total	\$8,242

- By comparison, the burden per Town of Amherst resident is much lower, as follows:

Amherst	\$1,158
County	\$806
Williamsville Central SD	\$16
Total	\$1,980

Vice-Chair Townsend asked what the cause of the per-resident differential was and queried whether or not it was the result of more lucrative compensation in Buffalo. Dr. Foster replied that there is a wide variation in the manner in which entities compensate their employees. Williamsville Central has a manner to address their OPEB which allows for it to be as low as it is. She asked Darren Kempner, Budget and Finance Policy Analyst of the UB Regional Institute, to provide additional information.

Director Arthur asked whether the fact that the Town of Amherst has a volunteer fire department as opposed to the City of Buffalo which employs its firefighters, would contribute toward the higher per capita amount. Dr. Foster replied that this is a factor. He continued that the Amherst number would be higher if the village paid for services similarly to the City rather than having them provided on a volunteer basis.

County Executive Collins stated that he "takes issue" with Director Arthur's rational stating the "it is what it is," meaning that, regardless of how various municipalities provide their services, the per resident OPEB liability is a fixed number.

Chair Kolkmeier noted that it is an additional problem that individuals will move from areas with high levels of liability out to the suburbs where there are lower levels of liability to avoid the higher levels of taxation which will need to be levied in order to fund the liability.

Director Arthur noted that, further exasperating the situation in the City of Buffalo is the fact that 45% of properties are tax-exempt such as the site of the current meeting held in a public-owned facility.

How Does Buffalo Compare?

- Compared to residents of larger Northeastern cities, Buffalonians face a significant burden.

Various Northeastern Metropolitan Areas

Buffalo, New York - \$7,436
Boston, Massachusetts - \$8,318
Baltimore, Maryland - \$3,253
Philadelphia, Pennsylvania - \$759

What's at Stake?

“Elected officials should demand that before the end of the year, their administrative teams assemble a plan that addresses these issues. Failure to do so will leave you in a position of “bluffing” the investment community in the coming year, and that will not be a pretty picture” - Girard Miller, Governing Magazine – May 2009

What Options Do We Have?

- “Doing nothing” is not a viable option.
- Customary Actions: raise taxes, decrease services, add new taxes and fees; and/or
- Fiscal Reform: prefunding, cost containment including benefit changes and creating a healthcare consortium; and/or
- Radical Reform: consolidations/mergers, restructurings or bankruptcies.

Customary Actions

- To meet the ARC entirely by taking the customary action of **raising property taxes**, how much would property taxes on a \$100,000 home have to rise?

District	\$855 (92.5% increase)
City	\$590 (46.5% increase)
County	\$117 (22.7% increase)

Total	\$1,562
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Fiscal Reforms Undertaken Locally

NIAGARA COUNTY

- Joint Labor-Management Healthcare Committee keeps lines of communication open.
- Renegotiated labor agreements and retiree outreach reduced 30-year unfunded liability by \$9 million.

CHAUTAUQUA COUNTY

- Set aside \$12 million and earmarked investment earnings for future retiree health care costs.
 - Take advantage of Medicare Advantage and Medicare Part D plans.
-

Radical Reform

- Western New York - scant radical reform
- Milwaukee County, WI and Milwaukee City School District – considering dissolution due to billions of dollars owed for retiree healthcare liabilities
- Vallejo, CA – Filed for Chapter 9 municipal reorganization

What Stands in Our Way?

- In New York State, local governments can neither borrow to fund the liability nor establish a trust to fund the liability.

What Comes Next?

- Federal Healthcare Reform?
 - ***“We’re facing difficult times, and the impulse may be to push this issue aside. But almost two million working New Yorkers are counting on these benefits. The responsible thing to do is to start preparing for the future in order to protect health care benefits and save tax dollars.”*** -
New York State Comptroller Thomas DiNapoli, May 2008

Dr. Foster ended her presentation and asked if anyone had further questions.

County Executive Collins asked, in the actuarial evaluation, what rate was used for the assumed inflationary cost of annual healthcare cost. Mr. Kempner replied each individual governmental entity has reported using different parameters to determine their liability, depending on their specific contract provisions. On average, the annual inflation rate that was used was 9 percent.

County Executive Collins asked what percentage of set-aside for savings was assumed as proper to pay for the various liabilities. Mr. Kempner replied that three percent was a standard inflationary measure with a minimal variation.

Dr. Foster noted that the rate of increase in healthcare costs is anywhere between 9-18% annually, much higher than the rate of set-asides.

County Executive Collins stated that, in Erie County, retirees go on Medicare at age 65. It is his belief that the actuarial assumptions provided are “extraordinarily pessimistic” on two fronts: somewhat on the increased cost of healthcare but mostly the actuarial numbers. New contracts have been negotiated with the County workers which do not include retiree healthcare benefits for new hires. Workers are willing to forego future benefits for benefits in the near term.

Chair Kolkmeier acknowledged that this strategy has been successful for Erie County labor negotiations. He asked Ms. Janet Penksa whether this strategy could be effective in negotiations between the City and its respective bargaining units.

Ms. Penksa replied that there are many ways to approach the OPEB liability issue. The County Executive has taken one approach which is to remove the benefit for new hires. The City has instead pursued increasing employee contributions so that there is no longer the concept of “free healthcare” in the City. All new employees are to pay a portion of their healthcare. Further, the vesting periods for retiree healthcare has been increased; lower cost plans have also been institutionalized. Every new contract attempts to address this liability; the threat of binding arbitration undermines the City’s ability to make larger advances.

A discussion ensued regarding which bargaining units are subject to binding arbitration and the various mechanisms provided by legislation for this. Chair Kolkmeier noted that the discussion had become tangential and requested that the conversation be refocused on the material presented by Dr. Foster.

Director Townsend noted that the techniques by which other entities are addressing OPEB differ. She asked if a detailed compilation of the information was available and could be forwarded to the Board for review. Mr. Kempner replied that their information had been compiled after personal interviews with various regional governmental entities. He referred Director Townsend to the nationwide source used: a study conducted by the Center for State and Local Government Excellence titled, “Retiree Health Care in the American States.”

Director Mesiah noted that there are many ways to address the liability along with the Erie County or City approach. There is a whole range of options which haven't been looked at yet. Dr. Foster agreed that there is a wide array of options available, as depicted in the decision matrix provided in the presentation. The result of an inadequate response is dire.

Director Mertz referenced an article written by the National Federation of Municipal Analysts who got together to recommend a set of six parameters to review contracts. He agreed with Dr. Foster that the different entities have used separate assumptions such as the age at which employees retire, the investment discount rate, and the healthcare inflation rate. The City's assumptions are different than the District's set of assumptions. Dr. Foster agreed and noted that various scenarios can be run based on the various assumptions. The "actuarial science" can be used to hone the dollar amount.

Director Mertz commented that the City's approach as detailed by Ms. Penksa is a good initial approach to manage the liability. There has to be a calculation of how a 10% contribution toward employee healthcare impacts OPEB liability. Dr. Foster noted that the independent outside source who determined the City's OPEB liability would take this into account. Ms. Penksa stated that this would only occur if the City of Buffalo undertook another actuarial study to incorporate the new numbers, which is cost-prohibitive. A good municipal tool would be a standard set of factors which can be used in negotiations.

Chair Kolkmeier ended the discussion of the issue and thanked Dr. Foster and Mr. Kempner for their insight into the issue.

BURA Issues ***Annual Action Plan***

Chair Kolkmeier introduced Buffalo Urban Renewal Agency's (BURA's) Year 35 Annual Action Plan (Annual Action Plan). He noted that, to streamline the review, the staff had extracted the Executive Summary from the plan. The resolution prepared for approval is contingent on HUD's final approval, which is anticipated. He asked Principal Analyst Mike Kelly to provide a summary for the Board.

Utilizing a slide-show presentation, Mr. Kelly provided the following information:

Introduction

- The BFSA was asked to approve BURA's revised Annual Action Plan as a normal part of its oversight responsibilities. This is an annual submission. Until BFSA approves BURA's plan to spend these entitlement funds, BURA is not authorized to do so.
- BURA is responsible for administering the City's HUD formula entitlement grants. HUD makes its federal allocation to the City, and the City is ultimately responsible for administering these funds.
- The Annual Action Plan reflects the City's funding priorities and identifies the projects proposed to receive Federal funds under the CDBG, HOME, ESG, and HOPWA programs. The Annual Action Plan describes priority projects for neighborhood revitalization, public improvements, housing development, economic development, public services, and homeless activities.

- The Annual Action Plan (May 1, 2009–April 30, 2010) has been finalized and appears to be in balance. However, BURA’s original Plan was rejected primarily for deficiencies related to BURA’s Citizen Participation Plan. BURA’s management believes such issues have now been resolved and a revised Annual Action Plan was resubmitted to HUD on July 17, 2009.
- As of July 29, 2009, HUD was still reviewing the revised Annual Action Plan. If BFSA were to approve the Annual Action Plan, the resolution needs to include language stating that BFSA’s approval is conditional to HUD’s subsequent approval.

2009 Allocations

- BURA’s 2009 program year allocation for CDBG, HOME, ESG and HOPWA funds totals \$22,402,270 and is up over 3% from last year’s allocation.
- The CDBG, HOME and HOPWA programs all saw increases, while the ESG allocation was decreased slightly by \$4,455.

2009 Major Goals

- Concentrating resources in the mid-City Neighborhood Revitalization Strategy Area NRSA area (4 specific neighborhoods around Hamlin Park);
- Stimulating economic development in neighborhood commercial districts;
- Improving the health, welfare and safety of residents and those with special needs.

When organizations submit funding or grant applications to provide services throughout the City their applications are judged on a number of criteria, which include:

- The project’s eligibility;
- The completeness and quality of the application;
- The agency’s past performance and prior performance;
- The project’s necessity;
- The logic model provided with the application;
- The project’s budget; and
- The project’s location.

Spending Plan Specifics

- For the 2009 program year, Rehabilitation is the largest spending category at 35%;
- Economic Development is second at 22%;
- Planning and Administration at 15%;
- Public Services 11%;
- Clearance 6%; and
- Other 6% (Disposition, Acquisition, ESG, HOPWA) and rounded out by Public Facilities and Homeownership at 3% and 2 %).

Following Mr. Kelly’s presentation, Director Johnstone stated that she had many questions regarding the Executive Summary provided in the BURA’s Annual Action Plan. As the extent of the questions is voluminous, she asked that someone meet with her following the meeting to discuss her questions.

Motion to approve by Arthur, second by Mesiah. Approval 9-0 to take effect immediately.

RESOLUTION NO. 09-30

APPROVAL OF BUFFALO URBAN RENEWAL AGENCY’S PROGRAM YEAR 35 ANNUAL ACTION PLAN

WHEREAS, the Buffalo Urban Renewal Agency (“BURA”) submitted a revised Annual Action Plan for Program Year 35 to the Buffalo Fiscal Stability Authority (“BFSA”) for approval; and

WHEREAS, the revised Annual Action Plan for Program Year 35 was due to the U.S. Department of Housing and Urban Development (“HUD”) on or by July 17, 2009; and

WHEREAS, to facilitate the prompt spending of these needed public dollars, BURA is seeking BFSA approval at the July 29, 2009 BFSA Board Meeting, subject to HUD review and approval; 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 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, it appears that BURA officials have adequately responded to the initial concerns of HUD, which resulted in BURA’s original Annual Action Plan being rejected and BURA will follow HUD and BURA policies and procedures in obligating the federal funds; and

WHEREAS, BFSA Staff have reviewed such Plan and recommends approval of such Plan contingent on the approval by HUD; and

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority approves and authorizes the Buffalo Urban Renewal Agency’s Year 35 Annual Action Plan, contingent upon final approval by HUD.

City Issues
Overtime Update

Chair Kolkmeier asked Mr. Link to provide an update for the Board regarding the current status of fire and police overtime.

Utilizing a slide-show presentation, he gave the following information:

Police Overtime Year-end Distribution

The year-end projection for police overtime expenditures is as follows:

Patrol Services	\$2,895,560
Detective	\$2,671,817
Civilian	\$1,397,355
Sworn: Special Operations	\$887,619
Special Events	\$800,262
Special Operations	\$88,148
Sub-Total	\$8,740,761
Two Remaining Days in Fiscal Year	\$58,026
Year-End Projection	\$8,798,787
Grants/Reimbursements	(\$1,057,439)
Net Year-End Projection	\$7,741,348

Police Overtime Distribution (percentages)

The police overtime distribution is as follows:

Patrol Services	33%
Detective Overtime	31%
Civilian	16%
Sworn Special Operations	10%
Special Events	9%
Special Operations	1%
Total	100.00%

Director Townsend asked for clarification on what the role of those classified as “Civilian” is. Mr. Link explained that this includes largely report technicians but also dispatchers, janitors, etc.

Director Mertz asked whether report technicians have the same benefits as police officers. He speculated that at some point it becomes more cost-effective to hire more employees, although with expensive benefit costs, to reduce the amount of overtime payments. Mr. Link replied that report technicians have a separate bargaining unit. He acknowledged that there is a break-even point for adding employees versus paying larger overtime payments and that such an analysis would need to include healthcare costs amongst other costs.

Director Johnstone asserted that this type of analysis needs to be completed. She also noted it is more appropriate for the Police Department to complete and submit this analysis to BFSa rather than staff undertaking the work.

County Executive Collins commented that the material presented is, “a worthless document” and referred to it as, “analysis in a vacuum.” He stated that the total cost (salary + overtime + benefits) of labor is the only issue of relevance. If the police department is leaving a high level of vacancies and utilizing overtime instead as a source of workforce hours, then they are to be commended for keeping the total personnel service cost contained. The threshold is very high wherein hiring additional workers to reduce overtime expenses is cost-effective. Overtime paid at time-and-a-half is “a whole-lot cheaper in government” than hiring new workers and paying for health insurance, paid leave, etc. Erie County’s approach has been that overtime payments are preferred to hiring additional workers.

Chair Kolkmeyer replied that prior analysis has depicted that, when calculating police salaries, benefits, and overtime, the total expense has been less than the total budgeted. This is in juxtaposition with total

fire expenses whose actual exceed budgeted expenditures. By asking staff to research overtime expenditures and present this data, the aim is not simply to quantify a line item but to examine the root causes of the expenses.

Director Johnstone asked a question relative to “Special Events” expenditures. She asked if the various vendors compensate the City for the police services provided. Mr. Link replied that in some cases the funds are acquired at least partially through grant funds as well as from the vendors. In instances where the events are City-sponsored, the funds come directly from the City resources and/or grant funds.

Director Arthur commented that reviewing this information is “a waste of time.” Every meeting contains an update showing how overtime actuals compare historically and compared to the current year budget without making any recommendations.

Chair Kolkmeier rebutted that it is difficult to make adequate recommendations without examining the nature of the causes. Without examining the historic and current data, the Board can not provide appropriate guidance for future activities.

Director Arthur referenced the morning edition Buffalo News which contained an article titled, “Buffalo loses out on grants for police, City ineligible to apply because of vacancies.” A \$5 million federal grant had been declared unattainable for the City due to the large number of unfilled positions. Perhaps the recommendation should be to tell the City to hire more minority officers to reduce overtime and the vacancy rate so that the City will be eligible for these types of grants.

Director Townsend noted that the Board has examined the issue of overtime for a number of years. The Board has been told in the past by various representatives from the departments that the large overtime expenditure has been due to a lack of sufficient managerial controls. The Board has more recently been told that sufficient controls are now in place for the departments to better handle the allocation and limitation of overtime. At other points, the Board has been told that it is a “work-in-progress.” The concern is whether or not overtime is being used in the best interests of the taxpayers; has it been used only when necessary. This is especially important in the case of police and fire overtime as these expenditures are “pensionable.” With the “minimum manning” requirement, the ability to manipulate the use of overtime exists.

Director Arthur stated that the various police and fire departments in the State are “playing by the rules”; the only course of action should be to make a recommendation to Albany legislators to amend legislation.

Chair Kolkmeier replied that both departments have seen a wide increase in overtime costs over the last five years. While this could be attributed to workforce requirements, both the previous and current City Administrations have allowed for a large vacancy rate to balance budgets. If the overall budget in the department is balanced, it is okay.

Director Arthur responded that it is a typical tactic used by municipalities to transfer funds from departments which are under-budget to those which are over-budget.

Director Mertz commented that the analysis of the data is required in order to develop a set of proper recommendations. The level of paid leave is high and may be a contributing factor into the wide usage of overtime. Secondly, it is surprising that events such as Sabres games and the Turkey Trot are listed

under “Special Events” as they are planned and regularly occurring.

Ms. Penksa addressed this second point and replied that it is “name for a category” and merely an accounting function to track spending. The City Finance Department had instituted a “tracking and coding system” a year ago in order to better track the expense. Further, the Mayor had instituted a policy where Commissioners need approval for unanticipated overtime expenses. The Police Department has shown that the usage of overtime is necessary as its usage has facilitated a drop in the crime rate. With the latest round of changes, management has done everything administratively that it can; the next step is to address the issue in contract negotiations.

Police Overtime Year-End Projection

Police overtime year-end projection is as follows:

Year End Projection	\$8,798,787
Budgeted	\$7,131,000
Variance (Over/Under)	\$1,667,787

Year-End Overtime Expenditures

Police overtime expenditures are as follows:

2006 (Actual)	\$3.24 million
2007 (Actual)	\$6.41 million
2008 (Actual)	\$8.76 million
2009 (Adopted)	\$7.13 million
2009 (Year-End Projection)	\$8.80 million
2010 (Adopted)	\$9.20 million

Fire Overtime Year-end Distribution

The year-end projection for fire overtime expenditures is as follows:

Manpower Shortage	\$9,019,091
Investigations & Criminal Proceedings	\$138,461
Training	\$97,308
Special Events	\$7,405
All Other	\$1,093,586
Sub-Total	\$10,355,851
Two Remaining Days in FY	\$56,900
Year-End Projection	\$10,412,751
Grants/Reimbursements	(\$90,453)
Net Year-End Projection	\$10,322,298

At 2:17 PM Director Giardino exited the proceedings.

BMHA Issues

Contract Extension for Executive Director

Chair Kolkmeier noted that the Board had a personnel issue to discuss and asked for a motion to exit into executive session.

Motion by Mertz, second by Collins.

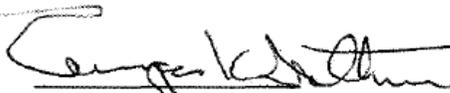
Director Arthur asked for counsel's opinion whether this issue was an appropriate issue to enter into executive session. Mr. Buzard replied that it was as it was a personnel issue which addresses the employment history of a member of the BMHA. It is permissible and prudent pursuant to New York State Public Officers Law, Article 7, Section 105, "Conduct of Executive Sessions."

Vote 7-1 (Arthur dissents) to exit into executive session.

**Buffalo Fiscal Stability Authority
Board of Directors
Executive Session
July 29, 2009**

The BFSA Board of Directors voted to go into executive session at approximately 2:25pm for the purpose of discussing the contract extension of the BMHA Executive Director. They returned to open session at approximately 2:40pm.

**All members present except Director John Giardino.
Others present were Mr. A. Vincent Buzard (BFSA Counsel with Harris-Beach), Ms. Jeanette Mongold.**



**George K. Arthur
Secretary**

Motion to return from Executive Session by Arthur, second by Johnstone. Vote 8-0 to return from Executive Session.

Chair Kolkmeier stated that the present issue before the Board is a contract extension for the Buffalo Municipal Housing Authority's (BMHA's) Executive Director. The Board has decided that the proper action is to table the issue for future consideration until such time as the contract for the remaining BMHA employees is resolved.

Motion to table by Arthur, second by Johnstone. Vote 8-0 to table the issue.

**BFSA Issues
*Organizational Overview***

Chair Kolkmeier asked Ms. Mongold to provide a summary of BFSA's organizational structure as well as an overview of the overall status of negotiated union contracts with the Covered Organizations. Utilizing a slide show presentation, she gave the following information:

Organizational Structure of the BFSA's staff

- BFSA currently has five staff members: an Executive Director, two Principal Analysts, a Comptroller, and a Manager of Administration & Technology.
- Mike Kelly serves as the Principal Analyst of the City, BURA and BMHA. His past experience working for HUD in Washington, DC is drawn upon continuously within the analyses he performs related to HUD funding within these organizations.
- Bryce Link serves as the principal analyst of the School District and the Joint Schools Construction Board. The natural alignment between these two organizations allow us to maximize efficiencies within the analyses performed.
- Both Mr. Kelly and Mr. Link are also responsible for reviewing contracts that are submitted to the BFSA from the Covered Organizations.
- Greta Mobley serves as the Comptroller, and as such her primary responsibilities include recording all transactions of the BFSA in a timely manner, ensuring that set-asides and funds withheld are invested in accordance with our policies and outstanding agreements, and furthermore ensure timely payment of vendors and debt service.
- Nathan Miller is our manager of technology and administration. He manages the logistics of the office (timesheets, petty cash, purchasing), prepares the board minutes, maintains the website, manages other technology related matters, and overall provides support to the others within the office.
- There is a significant amount of overlap between the functions performed by each, with this overview providing a high level structure of the organization. There has been cross training so that a backup process is available in the instance that it is needed.

Standing Committees

- There are two standing committees: the Budget, Finance and Audit Committee and the Governance Committee.
- The Budget, Finance and Audit Committee is responsible for reviewing and approving the BFSA's independent audit, the BFSA's budget and four-year fiscal plan, and ensuring that adequate financial reporting controls are in place and is chaired by Director Giardino. Additionally, Chair Kolkmeier and Director Mertz serve on the Committee.
- The Governance Committee is responsible for ensuring that internal controls are designed appropriately and are functioning correctly. This includes the annual review of policies as implemented by BFSA.
- The chair of the committee is Vice Chair Townsend. Additionally Director Kolkmeier and Director Arthur serve on this committee.
- The committees meet at least twice annually; although additional meetings are held as needed.

Director Townsend interjected that it has been the practice of any directors wishing to attend a committee to be able to do so.

Negotiated union contracts with the Covered Organizations

Staff has prepared a summary of the negotiating units by covered organization, the estimated number of members per unit, and the current status of the respective collective bargaining unit.

City of Buffalo

- The raises for the PBA (Police Benevolent Association) are effective through July 1, 2009. If the

wage freeze had not been implemented by BFSAs, the PBA contract would have expired on June 30, 2007. The PBA is involved with the current Step Litigation which is looking for retroactive payment for those years of the wage freeze.

- The contract with Local 282-Firefighters expired on June 30, 2004.
- Two other City unions, Blue Collar-Caulkers and Machinists and Local 17-Operating Engineers have been out of contract as well.

Buffalo Public Schools

- The largest bargaining unit is the Buffalo Teachers Federation (BTF) representing 3,544 members. Their contract expired on June 30, 2004.
- Two other District Unions, Professional / Clerical and Administrators have been out of contract since 2004

Covered Organizations

- BMHA: all units have expired contracts going back to 2004.
- BURA's CSEA Local 1000 contract expired on June 30, 2004.

At 3:15 PM County Executive Collins exited the proceedings.

Policies & Guidelines

Chair Kolkmeier explained that the Governance Committee had met earlier in the day. He asked Director Townsend, Chair of the Committee to provide a summary of the proceedings for the Board.

Director Townsend replied that the Committee had voted to send a series of policies and guidelines to the full Board with the recommendation for approval. The material has been annually renewed and contains minor changes which reflect title changes, removing obsolete references and material.

Motion to approve the Procurement Guidelines, Prompt Payment Policy, Property Disposal Guidelines, Investment Guidelines, Code of Ethics and Whistleblower Policy cumulatively by Arthur, second by Johnstone. Approval 7-0 to approve.

This Resolution shall take effect immediately.

RESOLUTION NO. 09-31

APPROVING PROCUREMENT POLICIES FOR CERTAIN CONTRACTS

WHEREAS, the Buffalo Fiscal Stability Authority ("BFSAs") was formed by Chapter 122 of the Laws of 2003 to "oversee the city's budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings through debt restructuring; to finance short-term cash flow or capital needs; and if necessary, to develop financial plans on behalf of the city if the city is unwilling or unable to take the required steps toward fiscal stability and

WHEREAS, the BFSAs requires professional assistance in performing its mission, and.

WHEREAS, the BFSAs is a public authority of the state of New York and as such is governed by certain state laws that specify the method for the procurement of certain services, and

WHEREAS, in order to comply with state law it was necessary for the BFSA to adopt Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, and

WHEREAS, in Resolution 03-36 adopted October 7, 2003, the BFSA adopted procurement guidelines as required by law; and

WHEREAS, in order to further comply with State law, it is necessary for the BFSA to review the adopted procurement guidelines at least annually; and

WHEREAS, the BFSA Governance Committee reviewed and approved the proposed procurement guidelines on July 29, 2009; and

WHEREAS, upon reviewing this Procurement Policy BFSA determined that amendments were necessary to delete obsolete references, update to current information, clarify phrases, and provide continuity among policy directives; and

WHEREAS, the amendments noted above do not change the content or subject matter of this policy,

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Buffalo Fiscal Stability Authority hereby adopts the Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts that are attached to this resolution.

This resolution shall take effect immediately.

RESOLUTION NO. 09-32
READOPTING THE PROMPT PAYMENT POLICY STATEMENT

WHEREAS, Chapter 122 of the Laws of 2003, as amended, created the Buffalo Fiscal Stability Authority (“BFSA”) to provide financial oversight and budgetary control over the City of Buffalo and other Covered Organizations; and

WHEREAS, as a public authority, the BFSA is subject to regulation by the State of New York, either in the form of rules and regulations promulgated by the State Comptroller or legislation approved by the State Legislature and signed into law by the Governor; and

WHEREAS, §2880 of the Public Authorities Law requires public authorities to promulgate rules and regulations detailing its prompt payment policy and to periodically review the same; and

WHEREAS, the BFSA has developed and implemented a prompt payment policy statement to comply with this requirement; and

WHEREAS, the BFSA adopted its prompt payment policy statement on September 28, 2006 by resolution 06-61; and

WHEREAS, the BFSA readopted its prompt payment policy statement on September 24, 2007 by resolution 07-45; and

WHEREAS, the BFSA readopted its prompt payment policy statement on August 20, 2008 by resolution

08-33; and

WHEREAS, upon reviewing the Prompt Payment Policy, BFSA determined that amendments were necessary to delete obsolete references, update to current information, clarify phrases and provide continuity among policy directives; and

WHEREAS, the amendments noted above do not change the content or subject matter of this Prompt Payment Policy,

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Buffalo Fiscal Stability Authority does hereby affirm its Prompt Payment Policy statement.

This Resolution shall take effect immediately.

**RESOLUTION NO. 09-33
REAFFIRMING PROPERTY DISPOSAL GUIDELINES**

WHEREAS, Chapter 122 of the Laws of 2003, as amended, created the Buffalo Fiscal Stability Authority (“BFSA”) to provide financial oversight and budgetary control over the City of Buffalo and other Covered Organizations; and

WHEREAS, §2896 of the Public Authorities Law requires public authorities to adopt comprehensive guidelines which detail the authority’s operative policy on the disposal of personal property valued in excess of five thousand dollars; and

WHEREAS, the BFSA has developed and implemented property disposal guidelines to comply with this requirement; and

WHEREAS, the BFSA board approved the property disposal guidelines by resolution No. 06-69 on November 9, 2006; and

WHEREAS, the BFSA board readopted the property disposal guidelines by resolution No. 07-34 on September 24, 2007; and

WHEREAS, the BFSA board readopted the property disposal guidelines by resolution No. 08-34 on August 20, 2008; and

WHEREAS, upon reviewing the Property Disposal Policy, BFSA determined that amendments were necessary to delete obsolete references, update to current information, clarify phrases and provide continuity among policy directives; and

WHEREAS, the amendments noted above do not change the content or subject matter of this Property Disposal Policy,

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Buffalo Fiscal Stability Authority does hereby affirm the attached property disposal guidelines as required by §2896 of the Public Authorities Law; and

BE IT FURTHER RESOLVED, that the Executive Director is affirmed as the “contracting officer”

who shall be responsible for the disposition of property is hereby affirmed.

**RESOLUTION NO. 09-34
APPROVING BFSA INVESTMENT GUIDELINES**

WHEREAS, the Buffalo Fiscal Stability Authority (“BFSA”) was formed by Chapter 122 of the Laws of 2003 to “oversee the city’s budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings through debt restructuring; to finance short-term cash flow or capital needs; and if necessary, to develop financial plans on behalf of the city if the city is unwilling or unable to take the required steps toward fiscal stability; and

WHEREAS, Section 2925 of the Public Authorities Law requires public authorities to develop investment guidelines that establish a set of basic procedures to meet investment objectives, assure that investment assets are adequately safeguarded and collateralized, establish and maintain a system of internal controls including adequate accounts and records which reflect investment transactions and provide for accurate reporting and evaluation of investments in conformance with generally accepted accounting principles; and

WHEREAS, Section 3854 of the Buffalo Fiscal Stability Act directs BFSA as to permissible investments of public funds not subject to provisions of contracts with bondholders; and

WHEREAS, in Resolution 04-02 adopted January 21, 2004, the BFSA adopted investment guidelines as required by law; and

WHEREAS, in order to further comply with State law, it is necessary for the BFSA to review the adopted Investment Guidelines at least annually; and

WHEREAS, the BFSA Governance Committee reviewed and approved the proposed Investment Guidelines on July 29, 2009; and

WHEREAS, upon a review of the current Investment Guidelines, the BFSA determined that amendments were necessary to delete obsolete references, update to current information, clarify phrases, and provide continuity among policy directives: and

WHEREAS, the amendments noted above do not change the content or subject matter of these Investment Guidelines,

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Buffalo Fiscal Stability Authority hereby approve the Investment Guidelines that are attached to this resolution.

This resolution shall take effect immediately.

**RESOLUTION NO. 09-35
ADOPTING A CODE OF ETHICS**

WHEREAS, Chapter 122 of the Laws of 2003, as amended, created the Buffalo Fiscal Stability Authority (“BFSA”) to provide financial oversight and budgetary control over the City of Buffalo and other Covered Organizations; and

WHEREAS, as a public authority, BFSA is subject to regulation by the State of New York, whether in the form of State law, the Governor's Executive Orders or rules and regulations promulgated by the State Comptroller; and

WHEREAS, the Public Authorities Accountability Act of 2005 ("PAAA") establishes a wide range of duties and responsibilities for state and local public authorities to promote the highest standards of ethical practices by authority staff and members, and thereby to engender public confidence in their activities; and

WHEREAS, one such requirement is the adoption of a Code of Ethics, that at a minimum, reflects the standards set forth in Sections 73 and 74 of the Public Officers Law; and

WHEREAS, the BFSA adopted a Code of Ethics by resolution 06-50 at its meeting on August 9, 2006; and

WHEREAS, the BFSA amended and readopted a Code of Ethics by resolution 07-40 at its meeting on September 24, 2007; and

WHEREAS, the BFSA readopted a Code of Ethics by resolution 08-36 at its meeting on August 20, 2008; and

WHEREAS, a review of BFSA's current Code of Ethics finds that a change is needed to update Section II L (1) in order to remain in compliance with paragraph (1) of §73-a of the Public Officers Law; and

WHEREAS, the review also indicated a change to Appendix E "Policy Making Positions of the Buffalo Fiscal Stability Authority", as directed in Section II L (2), to reflect the agency policymakers filed with the New York State Commission on Public Integrity on February 16, 2009.

WHEREAS, the Governance Committee of the BFSA, has reviewed the attached Code of Ethics and has recommended its adoption by the BFSA Board;

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority does hereby adopt the attached Code of Ethics applicable to all BFSA staff and Board Members to ensure the highest level of honesty, ethical conduct and public trust in all of the BFSA's activities.

This Resolution shall take effect immediately.

**RESOLUTION NO. 09-36
REVIEW AND APPROVAL OF WHISTLEBLOWER POLICY**

WHEREAS, as a State public authority, the Buffalo Fiscal Stability Authority ("BFSA") is subject to the provisions and requirements of the Public Authorities Accountability Act of 2005 ("PAAA"); and

WHEREAS, the PAAA requires that all public authorities "establish written policies and procedures on personnel including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the authority, investments, travel, the acquisition of real property and the disposition of real and personal property and the procurement of goods and services"; and

WHEREAS, BFSFA already has established and adopted a Code of Ethics,

WHEREAS, BFSFA adopted a whistleblower policy on January 28, 2008; and

WHEREAS, BFSFA reaffirmed the whistleblower policy on August 20, 2008; and

NOW, THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority hereby renews the whistleblower policy attached to this resolution:

This resolution shall take effect immediately.

Honoring Former Executive Director Bertha H. Mitchell

Chair Kolkmeier introduced and summarized a resolution titled, "Honoring Former BFSFA Executive Director Ms. Bertha H. Mitchell."

Motion to approve by Arthur, second by Townsend. Vote 7-0 to approve.

RESOLUTION NO. 09-37

HONORING FORMER BFSFA EXECUTIVE DIRECTOR MS. BERTHA H. MITCHELL

WHEREAS, on July 3, 2003, the New York State Governor signed into law Chapter 122 of the Laws of 2003, also known as the Buffalo Fiscal Stability Authority Act, which created the Buffalo Fiscal Stability Authority ("BFSFA") to assist in the restoration of fiscal stability in the City of Buffalo; and

WHEREAS, on October 13, 2003, Bertha Mitchell joined the BFSFA staff as the first Chief Financial Officer (CFO) of the Authority after an illustrious finance career in the private sector. Ms. Mitchell's skill set made her "highly qualified for the position and she possessed unique training and experience..." and

WHEREAS, during her tenure with BFSFA, Ms. Mitchell served as Chief Fiscal Officer and Executive Director; and

WHEREAS, as CFO of the Authority, Ms. Mitchell lead the team to establish BFSFA's AA- credit rating and therewith assisted the City of Buffalo and the Buffalo Public School District in reducing their annual debt costs, and realizing more than \$237 million in savings; and

WHEREAS, as Executive Director, Ms. Mitchell was instrumental in maximizing BFSFA's assistance to the City of Buffalo, leading to the City's highest level of financial reserves in history and its enhanced credit rating to the highest level in many years; and

WHEREAS, Ms. Mitchell's commitment to Buffalo and the Western New York community transcended her work with BFSFA to include serving on the Board of the United Way of Buffalo and Erie County, and as a member of many professional organizations, including the New York State Government Finance Officers' Association; and

WHEREAS, after more than five years of tireless and dedicated service to BFSFA, Ms. Mitchell has chosen to step down from the position of Executive Director to retire, pursue other interests and return to private life; and

WHEREAS, Ms. Mitchell's innumerable contributions to BFSFA and the Buffalo community as a whole will endure.

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority does hereby honor and

appreciate Ms. Bertha H. Mitchell for her significant and outstanding contributions to both the Buffalo Fiscal Stability Authority and the City of Buffalo.

This resolution shall take effect immediately.

Adjournment

Chair Kolkmeier asked for a motion to adjourn which was carried unanimously. The meeting adjourned at 3:20 PM.