BUFFALO FISCAL STABILITY AUTHORITY
Meeting Minutes – March 9, 2011

The following are the minutes of the meeting of the Board of Directors of the Buffalo Fiscal Stability Authority ("BFSA" or the "Authority") held on Wednesday, March 9, 2011, in the Buffalo Market Arcade Complex, 1st Floor Conference Room. The meeting was called to order at 1:07 PM.

Board Present: Arthur, Brown, Collins, Floss, Johnstone, & Olsen

Board Excused: Giardino, Mesiah, & Townsend

Staff Present: Link, Miller, Mobley and Mongold

Additionally Present: A.V. Buzard, Esq., Harris Beach, PLLC;
H. Todd Bullard, Esq., Harris Beach, PLLC

Opening Remarks

Chair Olsen called the meeting to order. He noted that the meeting's agenda included the following:

- Consideration of a proposed labor agreement between the Buffalo Municipal Housing Authority (the "BMHA") and the International Union of Operating Engineers representing Local 17 ("Local 17");
- A financial review and update of the City of Buffalo (the "City") and the Covered Organizations (the Buffalo School District or the "District", the Buffalo Urban Renewal Agency or "BURA", and the Buffalo Municipal Housing Authority or "BMHA");
- Various recommendations from the Governance Committee regarding administrative issues for the Buffalo Fiscal Stability Authority (the "BFSA") including modifications to the Procurement Policy and amendments to the Incumbency Certificate; and
- Privilege of the Floor extended to any member of the attending public who wished to comment on any action taken at the day's meeting.

Roll Call of Directors

Secretary Arthur called a roll of the Board and determined that a quorum was present. The meeting commenced.

Approval of Meeting Minutes

Chair Olsen introduced Resolution No. 11-02, "Approving Minutes from December 8, 2010 and February 17, 2011."

Director Floss offered a motion to move the item. County Executive Collins seconded the motion.

BE IT RESOLVED that the Buffalo Fiscal Stability Authority approves the minutes of its meeting on December 8, 2010.

BE IT FURTHER RESOLVED that the Buffalo Fiscal Stability Authority ratifies and affirms Resolution No. 10-51 that was approved on December 8, 2010.

BE IT FURTHER RESOLVED that the Buffalo Fiscal Stability Authority approves the minutes of its meeting on February 17, 2011.

BE IT FURTHER RESOLVED that the Buffalo Fiscal Stability Authority ratifies and affirms Resolution No. 11-01 that was approved on February 17, 2011.

Vote 5-0 to approve.

Control Period Certification

Chair Olsen noted that the Board had been issued a memorandum from Harris Beach, PLLC, as to the inability of the BFSA to transition into an Advisory Period in the near future, as had been previously anticipated. The memo explained that the State Comptroller was unable to provide a certification related to the City financing bonds in the immediately preceding fiscal year. It further explained that the BFSA requires this certification per the enabling legislation in order to transition from a Control Period to an Advisory Period. This requirement is outlined within the Buffalo Fiscal Stability Authority Act (the "BFSA Act") and is clearly objective and not discretionary in its interpretation.

He added that it is important to note that the lack of a certification from the State Comptroller is not the only obstacle between the BFSA's transition into an extended Advisory Period. Section 3858 of the BFSA Act states that the BFSA may impose a Control Period if the BFSA determines at any time that a fiscal crisis is imminent. While this determination is subjective, the Board does not make this decision "in a vacuum." The legislative findings of the BFSA Act must be considered. Action must be taken to preserve essential services for City residents while ensuring that taxes remain affordable. Actions contrary to these two essential goals jeopardize the City's long-term fiscal health.
He added that it is indisputable that both the City and the District are confronted with significant fiscal challenges, despite the existence of budget carryovers and "rainy-day" funds. These are perilous financial times. The City employs non-recurring revenue sources including the use of fund balance and restricted AIM funds to fund recurring expenditures; the current level of expenditures are unsustainable over time without increases in revenue. The budgetary picture does not include salary increases for employees in both the Police and Fire Departments, both of which may seek binding arbitration in what could be called a "toxic bargaining setting." Other Postemployment Benefits ("OPEB") liabilities are currently over $1.2 billion, with Annual Required Contributions ("ARCs") over $100 million. State Aid is proposed to be cut in the future. The City's financial position is precarious over the short to mid-term, requiring additional oversight and collaboration with the BFSA.

He added that the condition within the District is worse than that of the City. The District will begin the fiscal year with a significant budgetary shortfall of about $60 million. Its financial plan fails to budget salary increases while both the teacher's union and the administrator's union are out of contract, though salary increases would significantly increase the deficit. Moreover, the District is incredibly dependent on State Aid, without any other realistic options for funding. Additional mid-year cuts to State aid are not unlikely, even given the currently proposed cut of $24 million detailed in the Executive Budget. The District's arsenal to cut expenses is limited, similar to the City's, with only three viable areas: layoffs including teachers, teachers' aides, and administrators, school closures which is limited by political realities of resistance from disgruntled parents and the ambitious and costly expenditures that the District and the State have made to upgrade facilities, and impoverishment of its curriculum through cuts to programs which focus on students' growth and achievement but are not mandated. These sorts of actions to deal with an ever-widening structural deficits will compromise the quality and integrity of public education in the City of Buffalo as well as jeopardizing the City's long-term fiscal health. Absent significant change in the current fiscal outlook, it will therefore be incumbent on the BFSA, after a transition to an Advisory Period, to seriously consider a transition back into a Control Period because of the imminence of fiscal crisis.

He added that without the certification from the Comptroller that the City accessed the bonding market in the previous fiscal year, it is counsel's opinion that the BFSA can not transition into an Advisory Period at this time.

At 1:15 PM, Mayor Brown entered the proceedings.

Director Arthur asked how counsel had derived its opinion regarding the inability for the BFSA to transition into an Advisory Period. He asked if the BFSA had had communications with the Office of the State Comptroller regarding this issue. Executive Director Jeanette Mongold replied that the certification needs to state that the City borrowed in the immediately preceding fiscal year, per the BFSA Act. However, the City did not borrow within fiscal year 2010. This had been communicated to the BFSA by both the City Comptroller as well as the City's Administration.

Director Arthur inquired if the Board had received a written opinion from either the State or City Comptroller. The understanding is that both entities must separately submit their respective opinions regarding the certification. Such a certification may take into account the opinions of outside experts.

He offered a motion that the Chair draft a letter on the behalf of the Board to both the City and the State Comptroller requesting a written opinion whether or not the certification required by Section 3858 of the BFSA Act to transition into an Advisory Period could be provided, as well as an appearance by both parties at an upcoming meeting to discuss their respective findings.

Ms. Mongold noted that the BFSA had received verbal, not written confirmation from the City Comptroller's office of the inability to certify that the City issued debt within fiscal year 2010. Debt had been issued in both June of 2009 and July 2010, outside of fiscal year 2010.

Director Arthur replied that it is disrespectful to the BFSA not to be provided a written opinion from the City Comptroller and State Comptroller relating to the inability to provide a certification. If this certification cannot be issued, it needs to be communicated to the BFSA Board of Directors.

Mayor Brown reiterated that the City of Buffalo Office of the Comptroller had failed to issue debt in the 2010 fiscal year. The City's ability to access the market was not an issue. It is unknown why the Comptroller had not issued the debt in the 2010 fiscal year, given that the City Comptroller has long been an advocate of the immediacy in the need for the BFSA to transition into an Advisory Period. He lamented that the media labels mistakes made by the Executive narrowly while mistakes made by the other branches of government are broadly labeled with the general term of "the City".

He added that debt had been issued in fiscal year 2009 and at the very beginning of fiscal year 2011. It is unconscionable that debt had not been issued earlier so that the window would not have been missed and the BFSA Act's requirement could have been met. As a result of this inaction, the BFSA is not moving into an Advisory Period.

Mayor Brown concurred with Director Arthur's earlier sentiments that the BFSA should receive a written statement by both the City Comptroller and the State Comptroller. The statement from the City Comptroller needs to explain why the debt was not issued in fiscal year 2010 while the City was clearly in a position to do so, and explain why the Board is not moving into an advisory status when the City has had access to the market for borrowing purposes.

Director Floss referenced the following language from §3858 (1) (2) of BFSA Act: "The joint certification made by the [City] Comptroller and the State Comptroller shall be based on their separate written determinations which may take into account a report and opinion of an independent expert in the marketing of securities selected by the authority as well as other information available to the comptrollers." He asked that the request for a written statement by the State Comptroller include a request of an opinion regarding the BFSA Act's requirement for the certification.

Chair Olsen asked Mr. Buzard for an opinion regarding this request.

Mr. Buzard replied that §3858 (1) (2) contains two requirements which need to be met prior to the commencement of an Advisory Period. The first requirement is that a joint certification is issued that securities were sold by the City during the immediately preceding year in general public market. This requirement is clearly objective and easy to verify whether or not it has been met. The second part of the requirement is the substantial likelihood that securities can be sold in the general public market through the end of the next fiscal year. Whether or not securities were sold in a fiscal year is an ascertainable fact, they were either sold or not.

Mayor Brown replied that the City had access to the general public market in fiscal year 2010 yet did not sell securities. He asked Mr. Buzard if this inaction could be termed "a mistake" or as "sabotage." Mr. Buzard replied that he did not examine the rationale for the lack of a sale in fiscal year 2010, only the language of the BFSA Act. The conditions of the BFSA Act for a transition into an Advisory Period were clearly not met.

Mayor Brown replied that the purchase of securities is a job function of the City Comptroller, not the City Mayor or the Buffalo Common Council. He asked why the City of Buffalo should be penalized by the inaction of the City Comptroller for borrowing that both could and should have been completed in the proper fiscal year, that nobody else has the power, ability or control to do.

Chair Olsen noted that the BFSA Act is clear in this area. When it discusses an act to be taken, it is not discretionary: either the act needs to be taken or it is not. It is tantamount that the BFSA not exceed the statutorily derived powers. If the BFSA receives certifications in the future from the Comptrollers that bonds were in fact sold, then the Board will need to reexamine its Control Period position.

Director Floss stated that it would be helpful to receive some form of written statement from both the City and State Comptrollers stating what the issues are and what remedies, if any, are available. It is important for the Board to understand what their respective understanding is of this requirement. Many people have worked very hard over the past few years to help the City improve its financial position. It would be a shame not to be able to enter into an Advisory Period and discuss how well the City has done. While there continues to be a lot of work for the BFSA to continue to do to help the City, it is important for the BFSA to transition into Advisory Period, if possible, to demonstrate to the public the progress that has been achieved.

Director Arthur offered a motion to memorialize the Board's request for a written statement by both the City Comptroller and State Comptroller as well as to extend an invitation to both parties to meet with the Board at a public meeting to discuss said statements. Director Floss seconded this motion.

Vote 6-0 to approve the motion.

Mayor Brown reiterated that the failure to be in compliance was the result of inaction by the City Comptroller. It was neither a responsibility of the Mayor's office nor of the Buffalo Common Council. Reporting of this event should not use the broad term "the City" when describing the lack of action taken. The provision in the statute to help determine whether the municipality is strong enough to have market access. Clearly Buffalo is strong enough to have market access. Given that the City was strong enough to issue securities in fiscal year 2010, the BFSA should also ask the City and State Comptrollers to review the language of the BFSA Act to see if the Board may enter into an Advisory Period.

County Executive Collins noted that the legal argument was clear. An addition option available to the BFSA is to request that the New York State Assembly, Senate and Governor clarify the statute. The State Legislature could amend the language of the BFSA Act to conform to the suggested intent which is to demonstrate market accessibility. Given that the City gained access to the market shortly after the commencement of the next fiscal year, it is clear that it had access at the end of the prior fiscal year. The issue of whether or not the BFSA may reenter a Control Period in the near future is not germane to the current issue. It is reasonable to request that language in this section be amended to reflect its intent.

Chair Olsen stated that the BFSA will continue to work collaboratively with the City whether in a Control Period or an Advisory Period. The issue at hand is not whether the City is being "punished" but rather what the legal status of the Board is.

Mayor Brown concurred with these sentiments.

BMHA Issues
Collective Bargaining Agreement with Local 17

Chair Olsen advanced the agenda to the next item for consideration: a proposed Memorandum of Agreement ("MOA") between the BMHA and Local 17. He noted that the Directors had been provided with the following materials: an executive summary of the proposed MOA, an analysis which includes a side-by-side comparison of the current agreement with the previous agreement, and a request for approval from the BMHA along with a copy of the proposed Memorandum of Agreement and the forms required to be submitted.

He asked Ms. Mongold to begin the review of the key provisions and the cost analysis of the proposed CBA.

Ms. Mongold addressed the Board. She noted that two separate reports had been provided to the Board at the day's meeting. Both had been received late the prior day which necessitated their late disbursal. Each of the reports is a subjective OPEB evaluation on the City's and the District's OPEB liability taking into consideration the terms of the CBA with the terms of the previously approved CBA between the Buffalo Urban Renewal Agency ("BURA") and the Civil Service Employee Association Local 815

(CSEA Local 815). The findings of the report will be incorporated into the presentation to assist the Board with their evaluation of the proposed CBA.

She provided the following review of the key provisions and terms of the proposed MOA.

Background

- Fifteen budgeted positions are affected. Thirteen of these positions are currently filled.
  - There is a Chief Housing Engineer, Assistant Chief Engineer, and eleven Senior Housing Engineers
- It replaces the prior labor agreement which expired June 30, 2002.
- It is effective July 1, 2002, through June 30, 2011, or nine years.
- All prerequisite approvals have been obtained. The BMHA Board of Commissioners approved the MOA in June of 2010. The Buffalo Common Council approved it in July of 2010.

Ms. Mongold stated that all of the terms of the MOA are retroactive. There are some prospective costs in the out-years of the financial plan which will be addressed later in the presentation.

Salary Increases

- There is no salary increase for July 1, 2002 through June 30, 2007. No increases are permitted during the wage freeze period which began in April of 2004 and ended June 30, 2007.
- It includes:
  - A 3% salary increase retroactive to July 1, 2007;
  - A $3,300 base salary increase and 3% increase retroactive to July 1, 2008;
  - A 3% retroactive increase to July 1, 2009; and
  - A 3% retroactive increase to July 1, 2010.

Ms. Mongold noted that the base salary increase in other BMHA labor agreements has been $2,000. This contract's $3,300 base salary increase is reflective of the fact that the Operating Engineers have been without a contract two years longer than those other settled contracts.

She added that the average BMHA employee would see an $8,900 increase over the period of the proposed CBA, or 21.2%. Averaged over the nine years the contract, this 21.2% increase equates to 2.35% per annum.

Ms. Mongold noted that the concessions contained within the proposed CBA are not significant from a cost standpoint. However, there are several health insurance reforms.

Health Insurance Reforms

- All employees are placed in the lowest cost healthcare plan.
- Currently active employees continue to have a 0% contribution rate.
- Newly hired employees will contribute toward their healthcare premium at a 15% contribution rate for both single and family coverage.
- A 105(h) plan will be provided to all employees. The flexible spending plan is funded by BMHA who will contribute 50% of the healthcare premium savings.
- The vesting provisions have changed, as follows:
  - Current employeees ***may*** contribute to health insurance at retirement. Those retirees with more than ten years of BMHA service will not need to contribute. Those retirees with less than ten years of BMHA service will contibute 10% toward the cost of the retiree health insurance;

- Any current employee who retires on or before July 1, 2018 is "grandfathered" into the previous provision and may retire with the more costly health insurance plan without the need to contribute toward the cost of the plan;
- Newly hired employees will contribute toward the cost of their health insurance premium at retirement at a rate of 15% for those with more than fifteen years of BMHA service while those with less than fifteen years of BMHA service will contribute 25%;
- The terms of service have been amended to state "BMHA Service" rather than a combination of "City Service" and "BMHA Service";
- All employees are required to enroll in Medicare at age 65;
- New employees will need six months of BMHA service and be vested in the New York State Employee Retirement System ("NYSERS") to be entitled for health insurance at the 25% contribution rate. Tier IV employees require five years of service for vesting while Tier V employees require ten years of service;
- BMHA will now have the option to require new retirees to move into the Senior Product at BMHA's option;
- BMHA gains the ability to RFP (Request for Proposals) for health insurance provided on an annual basis.

Paid Leave Policy Reforms

- All employees will forego one personal day, consistent with the concessions of other collective bargaining units. The number of personal days is reduced to five.
- All newly hired employees will earn up to twenty vacation days compared with the current twenty-five days.
- The three set holidays during "heating season" are replaced with floating holidays in the off-season. This change is expected to result in less overtime.
- The ability to limit 24/7 operation to boilers that have certain horsepower levels has been added. This shift could potentially eliminate the second and third shift on a year round basis.

Miscellaneous Contract Terms

- Salary steps have increased from five to seven steps.
- A residency requirement for new employees has been added for the duration of their employment.
- All outstanding lawsuits and grievances will be eliminated.
- The in-lieu of health insurance payment has increased from $40 to $100/month for family coverage. This is equivalent to an annual increase of $720.
- The shift differential has increased from $0.30/hour to $0.75/hour.
- Eligible employees will receive payment for work shoes and clothes up to $225/annually.
- Employees will continue to receive thirteen paid holidays annually.
- The perfect attendance/sick leave incentive pay remains unchanged an continues to provide up to five days of pay.

Ms. Mongold concluded her review of the proposed CBA. She asked Principal Analyst Bryce E. Link to continue with the presentation.

Mr. Link addressed the Board. He began his summary of the cost and savings associated with the CBA.

He noted that he salary costs are through the end of the current four-year financial plan, though the CBA is set to expire on June 30, 2011. The cost increases for the retroactive piece continue though the end of the four-year financial plan, out to June 30, 2014.

Total Costs/Savings of MOA

- Salary Increases: From fiscal year 2008 through fiscal year 2014, the last out-year of the financial plan, the projected increased cost is $909,000. This is mainly due to the increases in salary and overtime as well as the corresponding increases for fringe benefits. Other contributing cost drivers are the in-lieu of health insurance cost as well as the work shoes/clothes payment.
- Savings: The savings from fiscal year 2008 through fiscal year 2014 are projected to be $67,000. The health insurance modification from the move from the 201 Plan to the 204 Plan accounts for $53,000 of the projected savings. Other savings over this period are derived from the increase in the number of steps as well as the utilization of the three floating holidays in the non-heating season. These savings are projected to be $14,000.

Impact on Financial Plan

- The financial plan and current year operations are impacted. Management has demonstrated that the incremental costs have been budgeted for and are available.
- The true cost of the MOA between fiscal year 2008 and the current fiscal year is $399,200, of which $195,000 has been previously accrued, leaving an increased cost through June 30, 2011, of $204,200.
- The projected re-occurring cost is $148,000 a year. This amounts to $444,000 in the three out years of the current financial plan.
- The total impact through the end of the Financial Plan is $647,000.

Mr. Link concluded his summary.

Ms. Mongold thanked Mr. Link for his summary. She noted that the Board had requested an OPEB study to be completed for the City and the School District using the terms of the recently approved BURA contract with CSEA Local 815. The purpose of the study was to see what the changes would be over a thirty year period.

Director Johnstone asked Ms. Mongold to clarify which CBA had been used as the basis of the study. She replied that the CBA used was the agreement the Board approved at the February 17, 2011 Board meeting between BURA and CSEA Local 815; which will be the basis of measuring all future CBA's brought to the BFSA for review.

Ms. Mongold added that the study had used the following assumptions:

- Eligibility: At least ten years of service is required for an employee to receive healthcare at retirement. The employee must be vested in the New York State Retirement System. Per New York State law, there is no service requirement for a disability pension for Police or Fire. The actuaries did not change this assumption as it would improperly skew the results of the study. In addition, the new assumptions were applied only to active employees. Those employees who have already retired have previously bargained benefits; no changes to any of these benefits are assumed.

Director Floss sought clarification regarding the parameters of the study, including why Tier V employees were not included. Ms. Mongold provided further specifics that the calculations are based on a database from 2008, and Tier V was not created until 2010. The study population is based on actual retirees and actual employees working at that time. It does not include new/future hires, but illustrates the current liability based on the current population.

County Executive Collins added that the intent of the study was to take the exact population used to calculate the City and District's current OPEB liability, and apply the new terms of the BURA contract using this identical population to demonstrate what the impact from the changed contractual terms would have on overall OPEB costs.

Ms. Mongold continued the review of the study's assumptions.

- Benefits: All employees move to a single carrier, lower cost health insurance plan (POS 204). All employees must enroll in Medicare at age 65. A Medicare supplemental policy would be purchased by the City on the behalf of the retiree.
- Miscellaneous: All other assumptions such as the mortality rate and discount rate have remained unchanged.
- Retiree Contributions: The percentage of the health insurance premium paid by retirees electing for single coverage is 40% for those with 10-14 years of service, 30% for those with 15-19 years of service, and 20% for those with 20 or more years of service. The percentage of premium paid by retirees electing for family coverage is 35% for those with 10-14 years of service, 25% for those with 15-19 years of service, and 15% for those with 20 or more years of service.

Ms. Mongold reviewed the results from the study.

OPEB Study Results (City of Buffalo)

- The Annual Required Contribution ("ARC") would be $27.14 million less, or 16.2% less, than the current ARC, under the stated assumptions.
- The total OPEB liability for active employees would be $313,730,000 or 52.6% less than the current OPEB liability, under these stated assumptions.
- The net OPEB liability for retired employees is unchanged. The total OPEB liability for all employees including both active and retired, would decrease by 25.5%.

Director Floss agreed with the County Executive's earlier comments that the comparison was appropriate. The positive terms within the BURA contract are likely to be equaled and exceeded in future contracts.

OPEB Study Results (Buffalo School District)

Ms. Mongold added that the OPEB study had been completed for the School District as well. The lower cost, single healthcare provider provision was not included in the study as had been with the City's study as this added assumption would have been cost-prohibitive. She noted:

- The total actuarial accrued liability ("AAL") was $1.206 billion. Of this amount, $573.2 million was for active employees.
- By changing the percentage contribution only, the AAL for active employees decreases $115.7 million to $458.5 million, or 20%.

County Executive Collins asked if the dollar figures shown were net present value amounts. Ms. Mongold confirmed that they were. A discount rate of 5% was used.

Ms. Mongold concluded her summary.

Chair Olsen requested a motion to move a resolution titled, "Approval of BMHA Memorandum of Agreement."

Director Arthur offered a motion to approve the resolution. Director Floss seconded the motion.

RESOLUTION NO. 11-XX
APPROVAL OF BMHA MEMORANDUM OF 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 the Covered Organizations; 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 BMHA and the International Union of Engineers, Local 17 ("Local 17") commenced negotiations and fully and completely bargained with respect to the terms and conditions of employment of union members; and

WHEREAS, on May 20, 2010, the members of Local 17 approved the Memorandum of Agreement (MOA) amending the previous Collective Bargaining Agreement between the BMHA and Local 17; and

WHEREAS, the Buffalo Municipal Housing Authority's Board of Commissioners approved the MOA on June 30, 2010; and

WHEREAS, the Buffalo Common Council approved the MOA on July 6, 2010; and

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

WHEREAS, the agreement provides for salary increases that are in accordance with the approved 2011 – 2014 financial plan; and

WHEREAS, the agreement provides for certain savings and increases to productivity through such modifications including various changes to health insurance, increasing the number of salary steps, transitioning to a lower cost health insurance plan, and health insurance contributions in retirement for new employees; 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 BMHA will pay for the increased costs of this collective bargaining agreement through the use of existing resources in the current budget and four-year financial plan; and

WHEREAS, all Local 17-17S litigation against the BMHA and BFSA concerning the wage freeze will be withdrawn and discontinued as more specifically provided for in the signed Memorandum of Agreement.

NOW THEREFORE BE IT RESOLVED that the BFSA does hereby approve the aforementioned agreement between the BMHA and Local 17, which is effective for the period from July 1, 2002 through June 30, 2011.

Director Johnstone indicated that she would be recorded in the negative. She explained her dissenting vote and stated that, given the data presented in the OPEB study as well as the City's current budget and four-year plan, the City can not afford to approve contracts such as this that do not include longer periods of vesting or more assumption of employee responsibilities. It would not be responsible to serve as a member of the BFSA Board to approve a contract that does not consider these types of issues.

Director Arthur replied that the employees considered by the contract are not City employees but rather that of a Covered Organization.

Director Johnstone replied that the criteria to evaluate a proposed collective bargaining agreement was not altered by the fact that it represents an agreement involving a Covered Organization.

Director Arthur suggested that the MOA be tabled rather than disapproved. The Board's concerns regarding the contract could be quantified and forwarded to the negotiating parties to see if these concerns could be placated.

Chair Olsen concurred with Director Johnstone's comments regarding the proposed contract and noted that the vesting period for retiree health insurance was particularly troublesome. He indicated that he also could not vote for it in the affirmative.

Director Floss noted that he had requested materials from the parties involved with negotiating the contract at an earlier Board meeting. He inquired if they had been remitted. Ms. Mongold replied that the request for materials had been made. No parties had agreed to the submission of a brief.

Director Floss stated that he would agree with the reasons given to disapprove the contract if it were prospective in nature. However, the proposed contract had been approved by the various parties earlier in the fiscal year and the contract expires at the end of the current fiscal year. As an individual who has negotiated collective bargaining agreements, disapproval of this sort of contract can make negotiating future contracts more difficult. The concessions the Board would like to see in future contracts may not be as forthcoming. This should be a major consideration when determining whether or not to deny this contact.

County Executive Collins stated that he respectfully disagreed with Director Floss's sentiments regarding future negotiations. The City and Covered Organizations will be in a stronger position when negotiating future contracts as a result of this issue. It is very similar to the position that Erie County is currently in where many contracts have expired several years ago. The County incrementally gains greater strength in negotiations as the time between the expired contracts increases because the workers are eager to receive raises. The public employees deserve raises; taxpayers deserve significant give-backs in benefits provided.

He added that Erie County will never award retroactive payments ever as a term of a contract. Contracts need to have significant concessions especially in benefits before they can be approved. As time progresses, the cost of not negotiating a new contract increases for the public employee unions. The New York State Taylor Law slants bargaining power toward the public employee unions. This balance has been reversed in favor of Erie County due to this negotiating tactic. The worst thing to do would be to agree to the terms of a contract that expires shortly that contains many giveaways but very little in the way of concessions. The strength is not approving the CBA and forcing the Union back to the table for greater concessions.

Director Johnstone stated that, irrespective to where the responsibility belongs, the City of Buffalo will not be able to continue to make the required $150 million ARC for the pensions received now. This is unsustainable.

Mayor Brown agreed with these sentiments regarding the drawbacks of the contract. The union is small and the members are very deserving of raises. However, approval of this contract would establish a precedent that will hinder future contracts. This is especially detrimental given the current economic climate. The BMHA's management and Local 17 will need to renegotiate a new contact. He indicated that he would not vote in the affirmative.

Vote 2-4 to approve the resolution (Brown, Collins, Johnstone, and Olsen dissent). The resolution was defeated.

Director Arthur explained that the motion to approve the contract had been duly seconded and defeated. His motion to table the contract still stands.

Director Floss seconded the motion to table the MOA.

Vote 2-4 to table consideration of the MOA (Brown, Collins, Johnstone, and Olsen dissent). The motion to table the issue was defeated.

<u>Financial Review for the City and Other Covered Organizations</u>
City of Buffalo Second Quarter Report

Chair Olsen advanced the agenda to the next item for consideration: a financial review of the City and the Covered Organizations. The material will include the 2010 financial statements for the City of Buffalo and the Buffalo Urban Renewal Agency as well as the second quarter reports for the City of Buffalo and all of the Covered Organizations.

At 2:02 PM Director Floss exited the proceedings.

Mr. Link addressed the Board and provided a summary of the City of Buffalo's Second Quarter Report. The summary included the following:

Introduction

- At the end of the second quarter, the City of Buffalo is projecting a $1.3 million surplus;
- The City's adopted operating budget is $460.6 million. A net reduction of $1.3 million is projected due to a $1.8 million reduction in revenues and $3.1 million in reduced expenditures;
- At the end of the first quarter, the City had projected a $1.7 million surplus which has been reduced by $0.4 million.

Revenue

- The largest revenue variance is driven by the decrease in intergovernmental revenue in the amount of $2.3 million. The State's FMAP (Federal Medical Assistance Percentage) Contingency Plan reduces local aid to the City by $1.3 million, followed by a reduction for the delayed Medicare Part D reimbursement and will have a negative impact of $600,000;
- The Department of Substance Abuse was notified by the State of New York that their reimbursement would be reduced by $374,000;
- The reductions are offset by higher than expected miscellaneous revenue of $256,000. This is due to higher than expected rental income from the Broadway Market and the Marina, higher

than projected earned interest of $191,000, and higher than expected various other service fees in the amount of $127,000;
- The revenue reduction is offset by the projected reduction in current year spending, the largest of which is departmental spending driven by staff vacancies.

Expenditures
- Twelve of the fifteen departments are projecting under budget for a projected positive budgetary variance of $2.3 million;
- The City is projecting a positive budgetary variance of $800,000 due to lower fringe benefit and service costs. The City currently has a staff vacancy rate of 6.9% or 180 FTEs (Full-Time Equivalent) vacancies, compared to 156 vacancies at the end of the 1st quarter. Compared to the 2nd quarter of fiscal year 2009-2010, the vacancy rate was 172 FTEs or 6.6%;
- The Police Department is currently projecting the largest amount under budget at $2.1 million, a $900,000 increase compared with the 1st quarter estimate. The Department of Administration, Finance, Policy and Urban Affairs is currently projecting a year end positive variance of $253,000. The Law Department is projecting under budget by $227,000. The remaining nine departments are projecting to be under budget by a combined $739,500;
- Three departments are currently projecting to be over budget. This includes the Fire Department, the Department of Public Works, and the Department of Human Resources. The Department of Human Resources overage is attributed chiefly with the advancement of a Police Entrance exam from the following fiscal year to the current fiscal year and increases departmental spending by $300,000. The Department of Public Works is projecting to be over budget by $310,000 and is primarily due to the increase in capital outlays as well as an aggressive building maintenance program. The Fire Department is projecting to be over by $473,000 at the end of the second quarter. This overage is chiefly due to the utilization of overtime. The Fire Department was projecting to be under by $704,000 at the end of the 1st quarter; this represents a net change of $1.1 million. This is especially significant in light of recent comments made by the President of Local 282 to the Buffalo Common Council wherein President Cunningham expressed his intention to advise members of the union to move to the more costly 901 Health plan. The projected cost associated with such a change is $2.5-$3.0 million annually.

Current Year Concerns
- The City is still faced with the potential impact of the Wage and Steps litigation lawsuit. The potential current year negative impact is $30 million;
- There is the potential for reduced or delayed aid payments, either of which would negatively impact the City. The State's fiscal year ends March 31st while the City's ends June 30th. Reductions in aid payments from the State in the State's next fiscal year would negatively impact the City's current fiscal year as well as the next;
- Similarly to the Buffalo School District, the City has several outstanding labor contracts. Two of the largest unions, the Fire Union and Police Union, have the option of going to binding arbitration. Binding arbitration would have a severe impact on the City's current year operations depending on what the award is and what time period is covered. Retroactive awards will have a compounding affect that would carry forward in the current fiscal year and following fiscal years; they are not one-time costs.

Mr. Link concluded his summary of the City of Buffalo's 2nd Quarter report.

Chair Olsen commented that the budget carryover and rainy day fund are often discussed. The turnaround has been significant. The Mayor's Administration is to be commended for this. However, the reality for the City's fiscal situation is still extremely challenging. The comments made by President Cunningham in the Buffalo Common Council's chambers are demonstrative of the toxicity of the labor negotiating environment. The threat of costing the City more money as a bargaining tool is at best inappropriate. It is particularly concerning that recurring cost are met with one-time funding sources: there is no ongoing funding source. Particularly, the City's OPEB liability is concerning. It should be our first priority. The City needs to be working on treating the employees fairly while managing this liability in such a way that it doesn't "sink the boat." While it is encouraging that the City has significant surplus funds and that the City has improved its bond rating, it is concerning that, like the School District, the City has a large OPEB liability and does not have all of the means by which to control it. There is a tremendous challenge to the City and the School District, both of whom have achieved many gains in the last few years.

He added that the large surplus both the City and the School District have achieved have been largely the result of the wage freeze. Future use of wage freezes is not the ideal way for these entities to balance budgets.

City of Buffalo Year-End Financial Statements

Ms. Mongold noted that BFSA had received the year-end audited financial statements for both the City of Buffalo and BURA. She offered the following summary of the material:

Buffalo Year-End Financial Statement Summary
Historical Revenue

- The City of Buffalo's historical revenue in fiscal year 2010 is consistent with fiscal year 2009. This is a combination of operating revenue and transfers in. The increase from fiscal year 2009 to fiscal year 2010 is due to transfers from other funds.

Historical Expenditures

- Historical expenditures increased $3.2 million or 0.7% from $447.3 million in fiscal year 2009 to $450.5 in fiscal year 2010. Operating expenditures increased $5.1 million while non-operating expenditures (payment on debt service) have decreased by $2.0 million.

Fund Balance

- The City's Fund Balance increased $4.1 million, or 3% from fiscal year 2009 to fiscal year 2010;
- The City's Undesignated, Unreserved Fund Balance increased $1.75 million from fiscal year 2009 to fiscal year 2010. The Rainy Day fund is a major component of the Undesignated, Unreserved Fund Balance but has limitations on its use;

Summary of Enterprise Funds

- The Solid Waste and Recycling Fund had a total net deficit of $17.5 million in fiscal year 2010. The Operating deficit was $2.6 million while the change in net deficit, which included non-operating revenue, was a deficit of $408,000;
- The Parking Fund had a total $45.5 million in net assets at the end of fiscal year 2010. Operating income was $5.0 million for fiscal year 2010. The change in net assets was $3.6 million;
- The Water System had total net assets of $25.3 million. The operating deficit for 2010 was $759,000 while the change in net assets totaled a deficit of $5.4 million.

Buffalo School District Second Quarter Report
Mr. Link provided the following summary of the District's second quarter report:

Introduction

- The District is projecting a $3.0 million unfavorable budgetary variance due to lower than projected revenues as well as higher than projected expenditures. There is a $1.4 million reduction in revenue largely due to the FMAP reduction as well as $1.6 million in increased expenditures;

Significant Changes since 1st Quarter Report

- The $6.2 million in projected reduced expenditures is offset by higher than budgeted charter schools costs. The District had anticipated that the Article VII vetoes would be addressed with new legislation that would hold charter school payments at the 2009 level. This did not happen. Charter School tuition costs increased $7.8 million. Total expenditures are projected to increase $1.6 million;
- There was a restoration of pension revenue spin-ups in the amount of $11.5 million;

Risks

- There are significant risks facing the District in the current fiscal year including:
  - The potential current fiscal year impact of $74.0 million if the Wage and Steps Litigation is not settled favorably for the District. It would have at least an additional $18.5 million impact in each following fiscal year;
  - The New York State Legislature passed the pension revenue spin-up which is an $11.5 million positive impact for the District. However, action was not taken on the increased charter school tuition, which will increase the District's costs by $7.8 million. This is lower than the original anticipated $11.3 million increase, due to lower than estimated state charter school enrollment;
  - There is the potential for reductions in State Aid payments and/or delayed Aid payments;
  - Unsettled collective bargaining agreements pose a risk to the District;
  - The annual growth in the OPEB liability is a significant risk and continues unabated.

Mr. Link concluded his summary.

Chair Olsen noted that the Buffalo News had recently quoted District Superintendent Dr. James Williams who had asked the State for additional State Aid in the amount of tens of millions of dollars to address a very large budget deficit. It is not as concerning whether or not the District attains a balanced budget but rather the method by which is attained. The District does not have many options available; those options negatively impact the quality of services provided.

Ms. Mongold noted that the presentation on the summary of BURA's 2010 financial statements would be condensed due to time constraints. In addition, the second quarter reports for BMHA and BURA can be found in the Director's materials for their review. Any questions regarding the material would be addressed following the meeting at the Director's convenience.

She added the following review of the BURA's 2010 audit findings:

- The audit findings are as of June 30, 2010. Many of the issues noted at that time have been addressed. BURA's Director was removed last year and has yet to be replaced;
- A material weakness was reported over significant journal entries noted by the auditor that were ultimately material to BURA's financial results;

- Deficiencies in the internal controls environment were noted including the lack of a formal audit committee, lack of a director, lack of a whistleblower policy, and lack of a formal employee handbook with rules and standards of conduct;
- The current accounting system will need to be replaced. The software is adequate for accounting of grants but is does not allow for accounting on the required GAAP basis. This drawback led to the need for significant audit adjustments and the resulting audit finding.

Ms. Mongold concluded the review of BURA's 2010 financial statements and noted that the BMHA's and BURA's second quarter report reviews would be omitted from the meeting due to time constraints. Summary material had been distributed to all of the Directors.

BFSA Issues
Revised Procurement Policy

Chair Olsen advanced the agenda to the next item for consideration: BFSA Issues. He noted that the Governance Committee had met prior to the start of the full Board meeting and had approved recommendations for the Board which included various modifications to the BFSA's Procurement Policy as well as updating the Incumbency Certificate to authorize certain individuals, including Directors and members of staff, to enter into certain banking transactions.

Chair Olsen noted that both "clean" and "marked" versions of the Revised Procurement Policy had been provided to the Directors and, as Chair of the Governance Committee, he advocated for the approval of the proposed revisions. He noted that the Governance Committee had additionally increased the \$15,000 threshold in certain areas of the Revised Procurement Policy to the \$25,000 level, consistent with the threshold afforded in New York State Executive Law.

Director Arthur offered a motion to approve the Revised Procurement Policy. Chair Olsen seconded this motion.

RESOLUTION NO. 11-03
AMENDING THE APPROVED PROCUREMENT POLICIES

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, the BFSA requires professional assistance in performing its mission; and

WHEREAS, the BFSA 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 and review at least annually its Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts; and

WHEREAS, BFSA initially established its Procurement Policies through the adoption of Resolution 03-36, "Approving Procurement Policies For Certain Contracts" on October 7, 2003; and

WHEREAS, BFSA has annually reviewed, amended as needed, and adopted its Procurement Policies to be in compliance with applicable State laws; and

WHEREAS, BFSA most recently adopted Resolution No. 10-40, "Amending the Approved Procurement Policies" on September 29, 2010; and

WHEREAS, the BFSA has determined that it is appropriate to revise the existing procurement policies prior to the annual review to include relevant provisions of Section 104-b(2)(f) of New York State General Municipal Law; and

WHEREAS, the BFSA determined it is appropriate to revise the existing guidelines to include relevant provisions of Article 15-A of the New York Executive Law; and

WHEREAS, the BFSA Governance Committee reviewed and approved a recommendation for the BFSA Board of Directors on March 9, 2011, to approve the Proposed Procurement Guidelines.

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

The Board voted 5-0 to approve the revised Procurement Policy.

Updated Incumbency Certificate

Chair Olsen asked for a motion to accept the recommendation from the Governance Committee and update the Incumbency Certificate.

Director Arthur offered a motion to approve that was seconded by Mayor Brown.

RESOLUTION NO. 11-04

AUTHORIZED SIGNATORIES AND SIGNING RESTRICTIONS FOR DEPOSIT ACCOUNTS AT HSBC BANK, USA, BANK OF NEW YORK-MELLON, AND M&T BANK; APPROVAL TO OPEN NEW DEPOSIT ACCOUNTS AT HSBC BANK, USA, THE BANK OF NEW YORK-MELLON, OR M&T BANK WITH SAME SIGNATORIES AND RESTRICTIONS

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

WHEREAS, in order to efficiently carry out the requirements of the BFSA Act, from time to time it is necessary for the BFSA to open new Accounts with the Banks so that certain incoming funds can be segregated for specific purposes, transferred to another BFSA account or to the City of Buffalo (the "City") as necessary, or invested in accordance with the BFSA Act as well as the BFSA's investment guidelines; and

WHEREAS, the BFSA Act also grants the BFSA the right to invest funds held on behalf of the City or funds retained for the repayment of outstanding BFSA debt; and

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

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

1. The Chair, Vice Chair, Secretary, Executive Director, and Treasurer are each authorized as a sole signer for any payment up to and including $25,000.00; and

2. Two of the above-listed signatories of the BFSA are required to jointly sign for any transactions in excess of $25,000.00; and

BE IT FURTHER RESOLVED, that the Chair, Vice Chair, Secretary, Executive Director, or Treasurer, can authorize the opening of new Accounts at any of the Banks, provided that the new Accounts will operate under the same signatories and restrictions above.

The Board voted 5-0 to accept the recommendation of the Governance Committee and approve the updates to the Incumbency Certificate.

Privilege of the Floor

Chair Olsen extended the Privilege of the Floor to any member of the attending public who wished to comment on any item considered at the day's meeting. Hearing none, he asked for a motion to adjourn the meeting.

Adjournment

Director Arthur offered a motion to adjourn the meeting that was unanimously seconded. The Board voted 5-0 to adjourn.

The meeting adjourned at 2:31 PM.