

BUFFALO FISCAL STABILITY AUTHORITY
Special Meeting Minutes
February 25, 2020

The following are the minutes from the meeting of the Buffalo Fiscal Stability Authority (the “BFSA”) held on Tuesday, February 25, 2020 in the fourth-floor conference room of the Buffalo Market Arcade Complex. The meeting was called to order at 1:41 PM.

Board Members Present

Chair R. Nils Olsen, Jr. (via video)
Secretary George K. Arthur
Mayor Byron W. Brown (proxy Estrich)
Director Frederick G. Floss
County Executive Mark C. Poloncarz (proxy Cornell)

Board Member(s) Excused

Interim Vice-Chair Jeanette T. Jurasek

Staff Present

Executive Director Jeanette M. Robe
Principal Analyst/Media Liaison Bryce E. Link
Senior Analyst II/Manager of Technology Nathan D. Miller
Administrative Assistant Nikita M. Fortune
Comptroller Claire E. Waldron

Additionally Present

Mr. Richard A. Grimm, III, Esq., Magavern Magavern & Grimm LLP
Mr. Geoffrey Pritchard, Chief Financial Officer, Buffalo City School District
Mr. Nathaniel J. Kuzma, General Counsel, Buffalo City School District

Opening Remarks

Director Floss served as Chair Pro Tempore and welcomed everyone to the meeting. He thanked everyone for attending and reviewed the agenda. The meeting was called for the sole purpose of reviewing a tentative labor agreement (“Successor Agreement”) between the Buffalo City School District (“District”) and Substitutes United/Buffalo – NYSUT (Substitutes) union.

Roll Call of Directors

Director Floss deferred to Secretary Arthur to call the roll of the members. Secretary Arthur called the roll noting the excused absence of Interim Vice-Chair Jurasek. Finding a quorum present, the meeting commenced.

City of Buffalo Commissioner of Administration, Finance Policy and Urban Affairs, Ms. Donna Estrich, represented Mayor Byron W. Brown in accordance with Subdivision 1 of §3853 of the BFSA Act.

Erie County Budget Analyst, Mr. Mark Cornell represented County Executive Mark C. Poloncarz in accordance with Subdivision 1 of §3853 of the BFSA Act.

Subdivision 1 of §3853 of the BFSa Act reads: "...The Mayor and the County Executive shall serve as ex officio members. Every director, who is otherwise an elected official of the City or County, shall be entitled to designate a single representative to attend, in his or her place, meetings of the Authority and to vote or otherwise act in his or her behalf. Such designees shall be residents of the City of Buffalo. Written notice of such designation shall be furnished prior to any participation by the signal designee...."

Successor Agreement

Director Floss advanced the agenda to review the Successor Agreement between the District and Substitutes. BFSa Executive Director Jeanette M. Robe and Senior Analyst II Nathan D. Miller were asked to present the staff's analysis.

Mr. Miller provided the Successor Agreement's overview. The previous labor agreement expired on June 30, 2019. The Successor Agreement would be effective from July 1, 2019 through June 30, 2021. The District employed 619 part-time employees at December 20, 2019.

The Successor Agreement proposed the following new terms:

Proposed compensation increases:

- \$3.00/day increase effective date of union ratification (December 18, 2019); rate of increase 2.2% – 2.7%
- \$4.00/day increase effective July 1, 2020; rate of increase 2.9% - 3.5%

The compensation rates of increase vary based on the per diem rate.

The Successor Agreement includes additional changes to provisions:

- Incentive Bonus: The terms of both the existing labor agreement and the Successor Agreement include an incentive bonus of \$850 for substitute teachers who teach for 65 days or more within a semester (September through January and/or February through June). The Successor Agreement changes the payment date from the pay period following the teachers' 65 days to the last pay period within a semester.
- Incentive Premium: Additional \$5.00/day for working in "low fill" rate schools, as determined biannually or as needed by District management.

Secretary Arthur asked for the list of "low fill" schools. Mr. Miller identified the following public schools:

1. PS #197: Math Science & Technology Prep
2. PS #206: South Park High School
3. PS #196: Math Science & Technology Prep @ 39
4. PS #43: Lovejoy Discovery School
5. PS #18: Dr. Antonia Pantoja Community School
6. PS #94: West Hertel Academy
7. PS #37: Marva J. Daniel Futures Preparatory School
8. PS #31: Harriet Ross Tubman School
9. PS #89: Dr. Lydia T. Wright School of Excellence

Ms. Estrich, City of Buffalo Commissioner of Administration, Finance Policy and Urban Affairs, asked for more clarification on what classifies a school as “low fill.” Mr. Miller noted that these are schools the District had identified as having a greater substitute teacher need. He deferred to District officials to provide additional information. Mr. Nathaniel Kuzma, General Counsel, Buffalo City School District, stated schools are identified as “low fill” based on average teacher absenteeism and the ability to cover teacher absences with Substitutes. The District is subject to high teacher absenteeism and has up to 1,000 absences per day. Subsequently, the average fill rate across the District is 75%, which means 25% of classes remain uncovered. In those cases, administration has to make adjustments to provide coverage from other classrooms within the school. The nine identified schools had a 50% to 60% fill rate, hence the incentive to have Substitutes take assignments at “low fill” schools.

Director Floss asked if there is a lack of certified STEM (Science, Technology, Engineering, and Mathematics) teachers. Mr. Kuzma confirmed this.

Director Floss asked how the District’s pay rates fare with surrounding areas. Mr. Kuzma stated the District needs to stay competitive and the District is near the top tier for daily rate.

Mr. Miller continued his presentation regarding contractual changes.

- Due Process: all references to employees’ due process rights are changed from 15 days to 25 days

Director Floss asked for clarification on the dates. Mr. Kuzma stated the dates referred to the length of time an employee can be held on unpaid status while an investigation into alleged misconduct is taking place.

The following terms were unaffected by the CBA:

- Health Insurance: Employees who worked at least thirty days in the preceding year are eligible to participate in the District’s group health insurance plan provided that they pay 100% of the premium cost. No Substitutes currently participate.
- Workday: four hours and thirty minutes
- Minimum Workdays Required: Twenty days in a school year to maintain substitute teacher status
- Retiree Health Insurance: Employees are not eligible for District-provided health insurance upon retirement

Mr. Kuzma noted that a Substitute’s standard workday is 7 hour and 20 minutes. Executive Director Robe clarified that the contract provides that a full-time day for pay purposes is 4 hours and 30 minutes. If a Substitute works less than that, the payment is pro-rated for hours worked. Mr. Kuzma concurred.

Mr. Miller provided the estimated All Funds net costs of the Successor Agreement at \$2.2 million over the four-year financial plan. No savings are associated with the labor agreement. The net cost is estimated at \$282,023 in fiscal year (“FY”) 2019-20. The District has adequate funding available to absorb the costs of the Successor Agreement and intends to perform budget transfers as needed from expenditure lines that are projecting favorable budgetary variances. The Financial Plan has not been modified.

Conclusions & Recommendations

Ms. Robe thanked Mr. Miller for his presentation. The agreement brings the contract with the Substitutes current, as it expired this past June, and it provides a two-year term. She noted there were few structural changes to the terms of the agreement and importantly health insurance is not a District-paid provided fringe benefit, which limits the bargaining for this unit.

The costs of the contract as calculated by the District, based on the assumed key underlying assumptions, appears reasonable. The District has not modified the budget or financial plan as the costs are assumed to be absorbed into what has already been established. The total costs for this contract as discussed is equal to 0.05% of the four-year financial plan.

The new incentive to assist in filling positions in those schools designated as low fill is anticipated to cost the District approximately \$85,000 annually. In order to assist with future contract negotiations, we recommend the fill-rates for school identified as low-fill be tracked and evaluated to determine the effectiveness of this incentive program.

There are terms of this contract that are effective upon Board of Education ratification. We further recommend that submissions be made to BFSAs as soon as possible to avoid future delays in the implementation of such provisions.

Director Floss asked why the CBA only covers a two-year term and not a usual five-year term. Mr. Kuzma responded that the District is currently in negotiations with the teachers' union and the previous contract with the teachers' union called for immediate negotiation with the substitutes' union. Therefore, a shorter timeframe was covered for the Substitutes contract as a bridge contract, to allow the District to continue to negotiate with the Buffalo Teachers Federation (the "BTF"). It is expected that the next contract with the Substitutes would align itself for the same time-period of the next BTF contract.

Secretary Arthur made a motion to recommend approval of the Successor Agreement to the Board of Education.

Chair Olsen seconded the motion.

The Board voted 5 to 0 for approval.

Hearing no additional comments, the meeting was adjourned by acclamation at 1:57 PM.