

NASSAU COUNTY INTERIM FINANCE AUTHORITY

RESOLUTION NO. 11-304

DECLARING A FISCAL CRISIS IN NASSAU COUNTY AND ORDERING, WITH RESPECT TO EMPLOYEES OF THE COUNTY, THE SUSPENSION OF ALL INCREASES IN SALARY OR WAGES, AND THE SUSPENSION OF INCREASED PAYMENTS FOR HOLIDAY AND VACATION DIFFERENTIALS, SHIFT DIFFERENTIALS, SALARY ADJUSTMENTS ACCORDING TO PLAN, AND STEP-UPS AND INCREMENTS

WHEREAS, on January 26, 2011, following extensive review and analysis, NIFA declared a control period upon finding a likelihood and imminence of a major operating funds deficit, as defined by the Act, of more than one percent for FY 2011, namely a statutory deficit of \$176 million and a deficit on a cash basis of \$49 million; and

WHEREAS, on March 22, 2011, at NIFA's request, the County submitted to NIFA a plan of proposed revisions to the FY 2011 budget to address the major operating funds deficit identified by NIFA, which plan, in addition to incorporating a requested wage freeze by NIFA worth \$10.5 million, provides for \$50 million in labor savings, including layoffs/department closures of 213 positions from 23 departments worth \$9.7 million, and a furlough of County personnel for 13 days worth \$17.1 million; and

WHEREAS, on this date, March 24, 2011, NIFA adopted Resolution No. 11-303, which finds that a wage freeze as authorized by NIFA's governing legislation is essential to the County's adoption and maintenance of a FY 2011 budget that is in compliance with such legislation; and

WHEREAS, by law NIFA, after enactment of Resolution No. 11-303, may declare a fiscal crisis and, upon making such declaration, shall be empowered to order a wage freeze;

WHEREAS, NIFA, with the assistance of its counsel and its outside accounting advisors, has conducted a careful analysis of the information provided by the County; and

WHEREAS, the County estimates that a wage freeze will provide more than \$10 million in budgetary relief in FY 2011; and

NOW, THEREFORE, BE IT RESOLVED, that NIFA hereby declares a fiscal crisis; and be it further

RESOLVED, that NIFA hereby orders that all increases in salary or wages of employees of the County, which will take effect after the date of this order pursuant to collective bargaining agreements, other analogous contracts or interest arbitration awards, now in existence or hereafter entered into, requiring such salary increases as of any date thereafter are suspended; and be it further

RESOLVED, that NIFA hereby orders that all increased payments for holiday and vacation differentials, shift differentials, salary adjustments according to plan, and step-ups and increments for employees of the County which will take effect after the date of this order pursuant to collective bargaining agreements, and other analogous contracts or interest arbitration awards requiring such increased payments as of any date thereafter are, in the same manner, suspended.

Ronald Stack
Chairperson

March 24, 2011

Declaration and Order of the Nassau County Interim Finance Authority
Relating to Resolution No. 11-304

Pursuant to Section 3669(3) of the N.Y. Public Authorities Law, Chapter 43-A (the “NIFA Act”), the Nassau County Interim Finance Authority (“NIFA”) hereby (i) declares a fiscal crisis, and (ii) orders with respect to employees of the County, the suspension of all increases in salary or wages, and the suspension of all increased payments for holiday and vacation differentials, shift differentials, salary adjustments according to plan and step-ups and increments that would otherwise take effect after March 24, 2011.

By Resolution No. 11-303, NIFA made its finding that a wage freeze is essential to the adoption and maintenance of a FY 2011 budget for Nassau County (the “County”) that is in compliance with the NIFA Act. As a result, NIFA may declare a fiscal crisis and, upon such declaration, is empowered to suspend the wage-related items specified above (as set forth in the Act). Informing NIFA’s analysis are the preliminary legal questions of why the Act provided NIFA with discretion to declare a fiscal crisis and order a wage freeze, and what standards should govern NIFA’s exercise of its discretion.

Suspending increases in compensation otherwise due to municipal employees under existing labor agreements, although authorized by the NIFA Act,

implicates the Contracts Clause of the United States Constitution. U.S. Const. Art. I, § 10. The courts long have held that the State, in exercising its police power, may impair such contract rights, even substantially, if it is reasonable and necessary to do so in furtherance of an important public purpose. The wage freeze provision of the Act was modeled on, and closely tracks, the wage freeze authority enacted by the State Legislature in the New York State Financial Emergency Act for the City of New York, the application of which was upheld against constitutional challenge by the Court of Appeals in *Subway Surface v. New York City Transit Authority*, 44 N.Y.2d 101 (1978). The Act's wage freeze section was, in turn, the model for the corresponding section of the Buffalo Fiscal Stability Authority Act, the application of which was likewise upheld by the United States Court of Appeals for the Second Circuit in *Buffalo Teachers Federation v. Tobe*, 464 F.3d 362 (2d Cir. 2006). Accordingly, the validity of the Act's wage freeze authorization is well grounded in the case law of the State and federal courts.

The important State purpose served by NIFA's power to freeze wages is established by the text, legislative findings and history of the Act, all of which were analyzed by NIFA in its January 26, 2011 Determination supporting the Resolution No. 11, the imposition of the current control period. NIFA incorporates that discussion by reference. NIFA's conclusion that the County's fiscal predicament involves an operating deficit exceeding the minimum statutory

amount triggering controls underscores the importance of the State's purpose to protect the creditworthiness of the County and, by extension, other municipalities of New York. The County Executive's and the County's effort to enjoin the control period, moreover, only reinforces the conclusion that County elected officials are unwilling to address the County's fiscal problem unless compelled to do so through the State's fiscal oversight authority, which includes the power to order a wage freeze.

The necessity of a wage freeze is established by NIFA's finding in Resolution No. 11-303 that the freeze is essential to the County's adoption and maintenance of a FY 2011 budget that is in compliance with the Act. Again, that discussion is incorporated by reference. NIFA does not view a wage freeze as on par with other policy alternatives, but rather sees it as a less harsh alternative to further layoffs and cuts. NIFA relies on, among other factors, the County's focus upon labor concessions from the outset of the FY 2011 budget process; the Administration's proposal of local legislative authority to reduce wages unilaterally, notwithstanding existing labor agreements, to address a perceived fiscal emergency; and the County's inability to identify alternative sources of budgetary relief despite an evident desire to avoid a control period.

The final element of a lawful impairment of existing labor agreements is that the State's exercise of its police power to do so must be reasonable under all

the circumstances. It is this third element that led the State Legislature to grant NIFA, amid a control period and upon finding a wage freeze essential, statutory discretion – as opposed to mandating – with regard to declaring a fiscal emergency and ordering a freeze. The evident legislative purpose was to provide NIFA with the ability to conclude that a wage freeze might in some circumstances present an unreasonable burden on the County workforce.

Under all the current circumstances, NIFA determines that a wage freeze is not only necessary but also a reasonable response to the County’s fiscal distress. While NIFA has considered the totality of the circumstances, the following points deserve mention.

First, the wage freeze ordered today is both temporary and prospective, factors which the courts have found to be strong indications of reasonableness. The wage freeze does not affect wages for services already provided to the County. Wages are not being reduced; rather, increases are being suspended for an executory portion of the agreements. The existing collective bargaining agreements between the County and the unions were struck well after the creation of NIFA. As such, the parties to those agreements bargained in light of the existing legislation requiring State oversight, including NIFA’s statutory authority to freeze wages. The wage freeze order is effective for one year. However, the wage freeze terminates before then with respect to employees who

have agreed to a deferral of increases pursuant to an agreement certified by NIFA. In addition, NIFA has broad statutory discretion to terminate the wage freeze, in whole or in part, upon finding that the fiscal crisis has been sufficiently alleviated or for any other appropriate reason.

Second, the recent history of the labor agreements with County employees generally has included increasing levels of compensation that have placed the County workforce at a higher level of overall compensation than many other municipalities. The point is not that the workforce, which delivers valued services to County residents, is compensated excessively. Rather, the point is that suspending incremental increases in their compensation temporarily is not unreasonable given the County's current challenges and the marketplace.

Third, existing labor agreements with the workforce contain plans or schedules for advancement or promotion, known as steps. As an employee acquires service credit or years of employment, the employee advances in steps and receives increases in compensation in recognition of increased experience and proficiency. As the Appellate Division held with respect to the Buffalo fiscal stability statute, suspending increases in payments and benefits during a wage freeze does not suspend the contractual provision concerning an employee's ongoing advancement of steps on the compensation schedule as a result of continued accrual of service credit not cancelled, annulled or eliminated. *Meegan*

v. Brown, 63 A.D.3d 1673 (4th Dep't 2009). In other words, upon termination of the wage freeze the County cannot ignore the fact that the employees have continued to accrue service credit and climbed the ladder of salary and career increments set forth in the collective bargaining agreements. Again, this moderates the impact of a wage freeze upon the workforce and supports its reasonableness.

Fourth, the size of the operating deficit faced by the County in 2011 makes some contribution by labor toward a resolution entirely appropriate. Labor leaders have expressed publicly that they have little desire to grant concessions to the County that would provide budgetary relief in 2011. Wages and benefits to the County workforce account for nearly one-half of the County's annual budgeted expenditures. In this context, a temporary and prospective wage freeze is reasonable.

One can posit factors that might weigh toward finding a wage freeze unreasonable, but none is present here. A history of pay reductions might weigh against a wage freeze, but the County workforce has experienced no salary reductions and labor concessions historically have been compensated by deferred benefits and other negotiated terms. The working conditions of County personnel are protected against deterioration by effective union bargaining and existing labor agreements. Longer working hours are generally compensated through overtime. The cost of housing on Long Island, where most County employees reside,

generally appears to have stabilized following a period of decline. Although concerns about inflation recently have resurfaced, the rate of inflation has been relatively modest, and in some periods reflected disinflation by some calculations, during the past year. In sum, NIFA perceives no factor suggesting an undue burden on the County workforce from a wage freeze.

Dated: March 24, 2011

By the Directors