

CITY OF BUFFALO
LIVING WAGE COMMISSION



Annual Report
2007

Letter from the Chair

March 10, 2008

In his State of the City address in February, Mayor Byron Brown declared, “today, I say with confidence: the City of Buffalo is well on its way back. The State of our city is strong, growing and our renaissance is in full swing.”

Indeed, a sense of rejuvenation, albeit tentative, is shared by many Buffalonians — residents who have waited and toiled a long time for economic recovery in the Queen City. New economic development projects tally over \$4.5 billion in investment. Impressive new buildings and interesting rehabs dot the downtown landscape, and the Medical Campus signals hope for bioscience and healthcare excellence. The arts, jewels throughout Queen City history, are increasingly valued for their economic as well as their cultural importance. Sustainable energy projects begin to get a footing for the coming green economy.

And yet, in 2007, Buffalo was named the second poorest city in America, with nearly 30% of us living in poverty. Among children, the rate is 43%. One in five Buffalo children live in “extreme poverty,” less than half the federal poverty level, under \$10,000 a year for a family of four. Our neighborhoods struggle with 20,000 abandoned properties.

“This is a tale of two cities,” admitted one economic development official. A reflection of growing inequality across the U.S., Buffalo’s economic condition will become a full renaissance only when the causes and consequences of urban poverty are eliminated. Only when quality education and quality jobs are available to all.

The living wage movement here and across the North American Continent represents a great bridge from poverty to self-sufficiency. It declares that no one who works should have to live in poverty. That fundamental moral principle inspires City of Buffalo Living Wage Commissioners, its extraordinary pro bono attorneys, Cornell and UB faculty and staff, UB law school interns, and countless volunteers who work, year in and year out, to make the living wage a paycheck reality for employees of the City of Buffalo and its contractors.

That same fundamental moral principle was wisely captured a few weeks ago in the writing exercise of Anna, a young Buffalo school girl. When told of an experiment to write six-word autobiographical statements, she wrote: *Living wages for everyone. Case closed.*

I have been privileged to serve as Chair of the Commission for over four years now — a remarkable experience of grassroots democracy and civic engagement. The Commission represents not only a dedicated diverse group of citizens and organizations, it also represents the best of collaboration for the public good. I am exceedingly proud of the accomplishments we report in the 2007 Annual Report, and I am profoundly grateful for the inspired contributions of all who made this progress possible.

We look forward to building on this record in 2008 and beyond. We plan to contribute, along with many others in our community, to the great renaissance of Greater Buffalo, in which opportunities and prosperity are widely and justly shared.



Lou Jean Fleron
Chair, Living Wage Commission

Purpose and Composition

The Buffalo Living Wage Commission was established on August 4, 2003, when Mayor Masiello signed the revised Living Wage Ordinance after its unanimous passage by the Common Council. The Living Wage Commission (LWC) is charged with enforcing the Living Wage Ordinance, monitoring its impact and making recommendations regarding necessary changes in the law.

The original version of the Living Wage Ordinance (Section 96-19 of the Code of the City of Buffalo) was enacted in August, 1999. The purposes of the Living Wage Ordinance are to assure that employees of city contractors earn a family-supporting wage, to promote self-sufficiency and reduce poverty, and to improve the quality of services rendered to and for the City by adequate compensation of contract employees. The law requires that employers with service contracts with the City of Buffalo in excess of \$50,000 and more than ten employees must pay their workers a living wage: currently \$9.90/hour with health insurance or \$11.11/hour without health insurance.

Living wage for employees of city contractors is:
 \$9.90/hr. w/ health
 \$11.11/hr. w/o health

As a citizens' commission, the LWC is composed of nine unpaid representatives, selected for three-year terms by eight organizations representative of interested populations within the City of Buffalo and specified in the legislation. Volunteer staffing has been provided by the UB Law School and Cornell University ILR.

The organizations and their 2007 representative(s) to the Commission were:

Commissioners

<i>Office of the Mayor</i>	Tanya Perrin-Johnson
<i>Buffalo Common Council</i>	Joseph Carriero
<i>Cornell University ILR</i>	Lou Jean Fleron
<i>WNY Area Labor Federation</i>	Robert Hellwitz
<i>Homeless Alliance of Western New York</i>	William O'Connell
<i>Coalition of Black Trade Unionists</i>	Pamela Watson
<i>Buffalo Niagara Partnership</i>	Craig Turner
<i>Network of Religious Communities</i>	Merle Showers Jim Anderson

Officers

<i>Chair</i>	Lou Jean Fleron
<i>Vice Chair</i>	Merle Showers

Staff

<i>Pro Bono Attorneys</i>	Stephen Halpern Sam Magavern
<i>UB Law School Faculty</i>	Sara Faherty
<i>Cornell University ILR</i>	Susan Swarts

Contact the Buffalo Living Wage Commission c/o:
 Cornell University ILR School
 237 Main St., Suite 1200
 Buffalo, NY 14203
 716-852-4191

2007 Summary of Activities

Overview

- The City revised the Living Wage Ordinance, upon the recommendation of the LWC, to add an automatic cost-of-living adjustment to the living wage rate each year.
- Morris Protective Services came into compliance with the Ordinance, resulting in raises for 17 security guards.
- Brand-On Services came into partial compliance with the Ordinance, resulting in raises for 33 employees.
- Rural/Metro Services came into partial compliance with the Ordinance, resulting in living wage raises for over 100 emergency medical technicians.
- Mayor Brown committed the City to curing the City's violations of the Ordinance, promising to give living wage raises to seasonal laborers and crossing guards and to resolve the City's many procedural violations.
- The nation's leading living wage experts came to Buffalo to present at a national conference, "The High Road Runs Through the City: Advocating for Economic Justice at the Local Level," attended by over 200 community members.

Contract Review and Investigation

The Ordinance requires that, when contracting for services, City departments must ensure that the bidding companies fill out an Application for Contract which includes projected wage levels and a commitment to pay the living wage. The department must then forward each Application to the LWC, and each completed contract to the Comptroller's office. To this point, the Application for Contract process has not been systematically followed and therefore, the LWC has had to undertake the laborious task of reviewing the contracts received by the Comptroller's office in order to monitor compliance.

With the help of four interns from the UB Law School and the City Auditor, the LWC reviews the contracts and then does further investigation on contracts that appear to be covered. For example, in 2007 the LWC resolved an investigation of a contract between the City and M&T Bank for lockbox services. M&T provided detailed documentation to show that, while its current contract activities fall just below the \$50,000 threshold for coverage under the Ordinance, M&T does pay all its employees working under the contract a living wage. M&T will continue to monitor its contract payments and, if the sum rises above \$50,000 per year, M&T will comply with all the Ordinance's provisions.

Compliance Monitoring

The LWC monitors the compliance of those employers who have acknowledged coverage under the Ordinance. In 2007, the LWC reviewed quarterly reports from Allied Waste, Buffalo Civic Auto Ramps, AllPro Parking, Brand-On Services, Morris Protective Services, Clear-All Snow Removal, Elite Staffing, and Phoenix Frontier. In cases where a company neglects to file its quarterly reports, the LWC follows up to obtain compliance.

Wage Rate

In July 2006, the LWC made recommendations to the City that the Ordinance be revised to include an automatic cost-of-living-adjustment (COLA). The Ordinance, as passed in 1999 and amended in 2003, had established rate increases through 2004 but no mechanism for adjusting for inflation after 2004. As a result, the rate had remained unchanged since 2004. LWC research showed that the great majority of living wage ordinances around the country include COLAs; indeed, one of the main reasons for living wage ordinances is that federal and state minimum wage laws have not kept up with inflation. Based on the LWC's recommendations, the Common Council unanimously passed a COLA provision in January 2007, resulting in a rate increase on March 24, 2007.

The 2007 rate rose from \$9.03 with health and \$10.15 without health to \$9.59 with health and \$10.77 without. On January 1, 2008, the rate rose to \$9.90 with health and \$11.11 without. Each January 1, the rate will be adjusted based on the inflation in the year preceding the prior year. In other words, on January 1, 2009 the rate will rise based on the consumer price index (CPI-U) for the year 2007.

The LWC chose this system, with its one year time lag, so that when employers prepare their annual budgets, they will already know the living wage rate for the coming year.

As the LWC reaffirmed in 2006, an employer can pay the lower living wage rate to an employee only if that employee is actually receiving health benefits from that particular employer. For example, for 2008, the employer must be providing the employee with health benefits worth at least \$1.21 per hour to take advantage of the lower \$9.90 rate.

Reporting to the City and the Public

The LWC has continued to make its forms, documents and annual reports widely available, including the use of a webpage on the City's website. The LWC's work in 2007 was widely reported by local media.

Compliance Coordinator: Margaret L. Wendt Foundation Grant

February 2007 marked the end of a one year grant from the Margaret L. Wendt Foundation to hire a part-time compliance coordinator to assist the LWC. Sam Magavern, who filled that position, has remained active with the LWC as a volunteer attorney. The Wendt Foundation grant enabled the LWC to make dramatic progress in its work, including:

- Obtaining a living wage for several hundred additional employees;
- Creating grievance forms and processing grievances from employees at three employers;
- Creating hearing rules and holding formal hearings for three non-compliant employers;
- Revising all living wage forms to make them easier for the City and employers to use and posting those forms on the City's website;
- Creating data and confidentiality rules; and
- Reviewing hundreds of City contracts and investigating dozens of them to determine coverage.

Fulfilling the Promise of the Living Wage: Current Issues

The Living Wage Ordinance has made an important difference to Buffalo. After countless hours of work by Living Wage Commissioners, volunteers, and community partners, a number of workers – perhaps 400 – have received wage increases bringing them to living wage levels.

However, the Living Wage Commission still faces the challenge ahead of planning and implementing a system in which the Living Wage Ordinance becomes a routine and transparent part of the way the City does business.

Rural/Metro Medical Services. Rural/Metro Medical Services has an exclusive contract with the City to provide ambulance service in response to 911 calls. The LWC first asked Rural/Metro to comply with the Ordinance in September 2005. Many of Rural/Metro's emergency medical technicians were making as little as \$7.90 per hour. Rural/Metro gave raises in September 2007, bringing large numbers of workers over the 2007 living wage rate. However, Rural/Metro continues to maintain that it is not covered by the Ordinance and to continue its lawsuit against the City and the LWC to overturn the LWC's findings. Rural/Metro's employees have sued for back wages and other relief; the parties are in settlement negotiations.

Brand-On Services. Brand-On Services leases the Erie Basin Marina from the City and operates restaurants, slip rentals, and other concessions there. The LWC first asked Brand-On to come into compliance in December 2003. Many of Brand-On's employees were making only minimum wage. In 2007, Brand-On agreed that it was covered by the Ordinance and began paying some 33 employees a living wage.

However, Brand-On applied for and received an exemption from the city for its workers under age 21. The LWC objected to that exemption because the Ordinance limits its use to employers who are operating summer youth or school-to-work programs. The LWC also objected to the City's failure to sanction Brand-On, as required by the Ordinance. Brand-On's employees have filed a suit for back wages and other relief and have sued the City for granting the exemption; the parties are in settlement negotiations.

City of Buffalo. The LWC has worked since its beginning in 2003 to help the City come into compliance with the Ordinance, but with remarkably little progress. In 2007, a number of seasonal laborers – garbage lifters employed by the Public Works Department – filed grievances with the LWC stating that they were paid only \$8.15 per hour with no health benefits. The LWC learned that some 63 of these laborers, plus over 150 crossing guards and various interns, were receiving less than the required living wage rate. After requests for compliance failed, the LWC held a formal hearing on June 22, 2007 and enumerated numerous violations by the City, including:

- Failing to obtain Applications for Contract from employers and forward them to the LWC;
- Failing to include living wage requirements in covered contracts;
- Failing to sanction Rural/Metro and Brand-On;
- Granting an illegal exemption to Brand-On;
- Failing to make quarterly reports to the LWC on its own employees;
- Failing to post the Employee Rights poster;
- Failing to inform employees of their right to the earned income tax credit;
- Failing to obtain an exemption for the Mayor's Summer Youth Program;
- Failing to pay all City employees a living wage.

On September 20, the LWC participated in a meeting with the Mayor and various faith, labor, and community leaders supporting the living wage. The Mayor committed the City to resolving most of the violations: obtaining Applications for Contract, including contract language, posting the poster, informing workers of the earned income tax credit, filing quarterly reports, and obtaining an exemption for the Mayor's Summer Youth Program. The Mayor also acknowledged that the seasonal laborers were entitled to a living wage.

Since then, the City has negotiated a contract with the crossing guards that increases their pay to above the 2008 living wage levels. That contract was approved by the Buffalo Fiscal Stability Authority in January 2008. The Mayor has also acted, with unanimous Common Council support, to raise the seasonal laborers to the living wage rate, retroactive to \$11.11. These two steps mark important progress toward bringing the City into full compliance with the Ordinance.

Contracting Reform. Each department in City government does its own contracting, and contracting processes are chaotic, inconsistent, and prone to legal violations, both inadvertent and intentional. In 2007, the former Commissioner and Acting Commissioner for Public Works both pled guilty to misdemeanor charges of improperly accepting gifts from contractors. The LWC, the Buffalo Niagara Partnership, the Partnership for the Public Good, and the *Buffalo News* have all called on the City to centralize contracting in one department, reform bidding to make it more fair and transparent, and make information about contracts publicly available in a simple database. In addition to its many other benefits, these contracting reforms would make it much easier to ensure that living wage procedures are followed. Mayor Brown has indicated that the City is working on major improvements to its contracting procedures.

Scope of the Living Wage. Even if these implementation issues are resolved, Buffalo's living wage remains narrow in scope and able to help only a small number of workers. For that reason, the LWC has recommended that other local governments, boards, and authorities adopt living wage policies like that of the City, including neighboring municipalities such as Amherst and Cheektowaga, as well as Erie County, the NFTA, and the Buffalo Public Schools. In his 2003-2005 Audit, the City Comptroller noted that the Board of Education employed over 1,000 workers at less than a living wage – including hundreds of food service workers and bus aides – of whom over 98% were Buffalo residents. The Comptroller recommended that the Board of Education adopt a living wage policy like that of the City. In Fall 2007, School Board member Pamela Perry-Cahill introduced a resolution calling for a living wage policy.

History and Authority of the Living Wage Commission

The original Living Wage Ordinance of the City of Buffalo was signed into law in July 1999 and went into effect July 1, 2000. However, the City failed to implement the Ordinance, until a lawsuit brought by the Coalition for Economic Justice and Citizen Action of NY prompted the City to enact the new Living Wage Ordinance in August 2002, placing the duty to implement the Ordinance with the Living Wage Commission.

The Buffalo Living Wage Commission is unique in its powers and authority. Unlike other such bodies around the country that have advisory roles to city officials, the Buffalo LWC has direct responsibility for enforcing the law and the authority to receive grievances, hold hearings, issue findings, and recommend sanctions for non-compliance. To fulfill its responsibilities, the Buffalo LWC must ascertain which employers are covered under the law, obtain certification from covered employers that they are informed of their responsibility to pay a living wage, receive and monitor quarterly employment and wage reports from covered employers, accept grievances from covered workers who are not receiving the living wage, and issue sanctions to non-compliant employers.

According to the Ordinance, the Buffalo LWC has the following powers [Section G.1.]:

- a. to evaluate the enforcement of the Living Wage Ordinance, issue an annual public report and such other reports as it shall deem necessary, and make legislative recommendations regarding needed changes in the Ordinance;
- b. to help notify City department heads responsible for entering into contracts of their obligations under the law and to assist in their understanding of the law;
- c. to hold monthly meetings;
- d. to hold public and private hearings and take testimony under oath;
- e. to receive, investigate and hold hearings in connection with complaints of employees of non-compliance with the Ordinance and retaliation by employers against employees asserting their rights under the Ordinance;
- f. to issue and make public written findings in connection with investigations of complaints or other allegations of non-compliance;
- g. to recommend sanctions in connection with findings of non-compliance after a notice and hearing to employers;
- h. to receive charitable contributions and grants to facilitate its work;
- i. to retain private counsel to assist the Commission in its work, provided that such counsel must agree to work free of any charge for legal services or costs unless attorney's fees are awarded by Court;
- j. to have access to and the right to duplicate the contracts governed by this Ordinance;
- k. to select a chairperson, by majority vote of the Commission; and
- l. to adopt rules for the operation of meetings and to carry out the powers enumerated above.

Community Partners

Attorneys Stephen Halpern, Sam Magavern, Charles Cobb, and Richard Lipsitz

Stephen Halpern and Sam Magavern served as general volunteer counsel to the LWC in 2007. Stephen Halpern, Charles Cobb, and Richard Lipsitz are representing the LWC pro bono in the lawsuit brought by Rural/Metro Medical Services against the LWC and the City of Buffalo.

Brennan Center for Justice, New York University School of Law

Attorneys at the Brennan Center, Paul Sonn and Annette Bernhardt, have aided the LWC on legal questions regarding living wage legislation in Buffalo and around the country. Mr. Sonn also participated in the High Road Runs Through the City conference.

Coalition for Economic Justice, Allison Duwe, Executive Director

CEJ, led by Allison Duwe, is the foremost community advocate for the full implementation of living wage policies.

Cornell University ILR, Lou Jean Fleron, Director, and Susan Swarts, Administrator, Workforce, Industry and Economic Development

Cornell has provided the Commission with leadership, administrative support and meeting space. Ms. Fleron and Ms. Swarts were also organizers of the High Road Runs Through the City conference.

University at Buffalo School of Law Interns and Professor Sara Faherty

Professor Faherty supervises law students externing with the LWC or performing class projects related to living wage issues. She also provides the LWC with advice and support and was one of the organizers of the High Road Runs Through the City conference.

Frequently Asked Questions

What is Buffalo's Living Wage Ordinance?

Buffalo's Living Wage Ordinance was passed unanimously in 1999 and amended in 2002 and 2007. It provides that certain workers must be paid a living wage. As of January 1, 2008, the rate is \$9.90 if the worker receives health benefits from the employer and \$11.11 if the employee does not. The central goal is to make sure that employees of the City and of employers who contract with the City earn enough to keep their families out of poverty.

When does the Ordinance apply?

The Ordinance applies whenever the City makes a contract for services in which the City pays or receives more than \$50,000 per year with an employer who employs more than ten people. If the Ordinance applies to a contract, then it applies to all subcontractors hired under that contract as well – even if the subcontractor employs less than ten people. The Ordinance also applies to all workers employed by the City itself.

There are two exceptions: the Ordinance does not apply to professional services such as legal, architectural, and engineering services, and it does not apply to construction workers who are covered by prevailing wage laws.

What are the employer's duties?

All employers bidding on service contracts with the City must submit an Application for Contract committing to abide by the Living Wage Ordinance. The Application for Contract is available from the City departments or from the Living Wage Commission (LWC). If the employer wins the bid and does not meet one of the exceptions, then the employer and all its subcontractors must do four things:

- Pay all employees a living wage;
- File Quarterly Reports with the LWC;
- Post two copies of the Ordinance or the Employee Rights poster designed by the LWC at the workplace; and
- Inform employees making less than \$12 per hour of their possible right to the Federal Earned Income Credit and make available forms required to secure advance Earned Income Credit payments from Contractor.

What if the employer fails to file an Application for Contract?

The Ordinance states that an “employer’s failure to file an Application for Contract may bar the City or any of its individual departments from considering a bid for contract. Any contract entered into by the City without receipt of an Application may be voided if not filed with the department within 60 days.”

Can an employer seek an exemption from the Ordinance?

The Ordinance allows for a possible exemption in three situations:

- If applying the Ordinance would violate state or federal law;
- If the employer is a not-for-profit; and
- If the employer is employing youth under age 21 in a summer youth program, school- to- work program, or other related seasonal part-time work.

These exemptions are not automatic. They may be granted by the Common Council upon a request from the Mayor.

Does the Ordinance apply when the contractor is paying the City?

Yes, the Ordinance was amended in 2002 to apply to situations where the contractor is paying the City more than \$50,000 per year, as well as situations where the City is paying the contractor more than \$50,000 per year. For example, the Ordinance applies to several parking companies which lease land from the City and operate parking lots or ramps.

Does the Ordinance cover part-time and seasonal employees?

Yes.

What rate should an employee receive if the employer offers health benefits, but the employee does not use them?

Employees are considered to be “with health benefits” only if they actually receive health benefits from the employer. The benefits must be worth at least the difference between the lower living wage rate and the higher rate. For example, as of January 1, 2008, an employer must actually provide the employee with at least \$1.21 per hour in health benefits in order to take advantage of the lower living wage rate of \$9.90.

When does the Living Wage rate change?

Beginning in 2008, the Living Wage rate will change automatically each January 1 based on inflation. The rate will rise to reflect the inflation in the year preceding the prior year, as measured by the Department of Labor’s Consumer Price Index for all urban consumers (CPI-U). For example, on January 1, 2008, the rate will rise based on the 2006 inflation rate of 3.2% to \$9.90 with health benefits and \$11.11 without health benefits.

Is an employer bound by the Ordinance if it was not mentioned in the RFP or contract?

Yes, the Ordinance applies directly to all employers who are covered by it; it does not need to be mentioned in an RFP or contract to become effective. All employers in Buffalo are responsible for knowing the law and following it when it applies.

What remedies do employees have if their employer violates the Ordinance?

Employees may file a lawsuit, and/or they may file a grievance with the Living Wage Commission. Grievances may be made anonymously. Retaliation by an employer is prohibited and can be punished with reinstatement, back pay, or other sanctions.

What powers does the Living Wage Commission have to address violations of the Ordinance?

The LWC has the power to investigate and address grievances or other allegations of non-compliance with the Ordinance. After a hearing, the LWC may recommend sanctions, which can include:

- Wage restitution for each affected employee;
- Suspension or termination of City contracts;
- Ineligibility for future City contracts for up to three years; and
- Withholding payment by the City of amounts due under the Contract.

What is the LWC?

The LWC was created by amendments to the Ordinance in 2002 to oversee and enforce the Ordinance. It is a volunteer citizen commission with power to investigate, hold hearings, and recommend sanctions. In most cases, the LWC is able to obtain compliance from employers through a process of information and discussion.

The LWC is composed of nine members serving three year terms. They are selected, one each, by the Mayor, Common Council, the Cornell University School of Industrial and Labor Relations, the Coalition of Black Trade Unionists, the Buffalo Niagara Partnership, the Western New York Labor Federation, and the Western New York Welfare Monitoring Task Force. Two representatives are selected by the Network of Religious Communities.

How do I contact the LWC?

You can reach the LWC at Cornell University ILR School, 237 Main St., Suite 1200, Buffalo, NY 14203, 716-852-4191.