

CITY OF BUFFALO
LIVING WAGE COMMISSION



Annual Report
2005

Letter from the Chair

The Living Wage is back in the news. In January 2006, the *New York Times Magazine* devoted its cover story to the question, "What is a living wage?" As the article makes clear, the Living Wage is attracting attention not just as a public policy debate, but as a compelling moral issue.

One reason for the wave of interest is the spread of Living Wage laws to over 120 places around the country, including New York, Boston, San Francisco, Chicago, and Los Angeles. Here in Western New York, the movement recently spread to SUNY Buffalo, where students persuaded the administration to make sure all maintenance workers receive a living wage.

Another reason for renewed interest is that Living Wage laws have been around long enough to get studied and to prove their case empirically. A recent study of the Los Angeles law, for example, found that it had increased pay for an estimated 10,000 jobs while causing very minimal reductions in employment.

The Living Wage movement goes right to the heart of the American dream: that hard work should pay off. After all, 84 percent of Americans support the idea that anyone who works full-time should not have to live in poverty. That simple idea is the basis for Living Wage laws.

And the dream is far from reality. In 2003, 24.3% of all U.S. workers were earning wages below the poverty level. When a worker cannot earn enough, families, neighborhoods, and cities suffer. That fact is easy to understand in Buffalo, where 26.6% of our households live in poverty. Here, it is all the more urgent that when the City creates jobs, those jobs pay enough to keep a family out of poverty. Good wages are essential tools in any strategy to reduce reliance on government assistance, raise homeownership rates, fight crime and neighborhood blight, and improve schools.

Those are some of the reasons the Common Council cited when it passed our Living Wage Ordinance in 1999. Buffalo's Ordinance is modest in scope – covering only the City and employers who contract with the City – but it has several unique features. Most importantly, our Ordinance is monitored and enforced by an all-volunteer commission, working at no cost to the taxpayers.

We go into 2006 with high hopes for continued improvements in implementing the Ordinance. We have a Mayor who co-sponsored the original Ordinance and increased support from key partners such as Cornell University and the UB Law School. In addition, we have a grant from The Margaret L. Wendt Foundation to help improve the City's contracting processes and the momentum of a Living Wage movement that is transforming the country one university, one town, and one city at a time.



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 \$9.03/hour with health insurance or \$10.15/hour without health insurance.

Living wage for employees of city contractors is:
 \$9.03/hr. w/ health
 \$10.15/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 Coalition for Economic Justice, UB Law School and Cornell University ILR.

The organizations and their 2005 representative(s) to the Commission were:

Commissioners

<i>Office of the Mayor</i>	Donald Allen
<i>Buffalo Common Council</i>	Joseph Carriero
<i>Cornell University ILR</i>	Lou Jean Fleron
<i>WNY Area Labor Federation</i>	Robert Hellwitz
<i>WNY Welfare Monitoring Task Force</i>	William O'Connell
<i>Coalition of Black Trade Unionists</i>	Robert Mootry
<i>Buffalo Niagara Partnership</i>	Bridgit Corcoran
<i>Network of Religious Communities</i>	Rev. Merle Showers Patricia Griffin

Officers

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

Staff

<i>Coalition for Economic Justice (CEJ)</i>	Maria Whyte Allison Duwe
<i>Pro Bono Attorneys</i>	Stephen Halpern Sean Ryan
<i>UB Law School Faculty</i>	Sara Faherty Peter Pitegoff
<i>Compliance Coordinator</i>	Samuel Magavern II

Contact the Buffalo Living Wage Commission c/o:

Cornell University ILR School
237 Main St., Suite 1200
Buffalo, NY 14203
716-852-4191

2005 Summary of Activities

Overview

In 2005, the Living Wage Commission (LWC):

- provided training for 14 City departments;
- reviewed 134 City contracts, with in-depth review of 40 contracts;
- investigated compliance of 8 employers;
- obtained compliance from one employer, with 21 employees being granted a living wage;
- monitored ongoing compliance by 6 employers;
- reviewed the Living Wage rate;
- made recommendations to the Mayor and the Common Council regarding improved implementation of the Ordinance;
- obtained over 1500 hours of free work from law students, non-profit staff, pro bono attorneys, LWC commissioners, and others;
- issued its first annual report in February 2005; and
- was awarded a grant from The Margaret L. Wendt Foundation to hire a compliance coordinator.

Training

Concluding in 2005, the LWC held compliance workshops to train City Commissioners and staff from 14 City departments on the significance of the Living Wage law and the importance of requiring Applications for Contract from employers who bid on city contracts. Those departments were: City Auditor, Public Works, Human Services, Police, Homeland Security, Assessment, Fire, City Clerk, Management Information, Human Resources, Council Staff, Purchasing, Law, and Strategic Planning.

Contract Review

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 each contract 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 reviewed listings of 134 City contracts. Of these, the LWC identified 40 contracts needing additional review to determine if they were covered by the Ordinance. Of those;

- 28 were not covered because they were subject to construction prevailing wage laws,
- 7 were not covered because they were professional contracts (i.e., with doctors, architects, etc.),
- 2 were not covered because they were for purchase of goods, and
- 3 required further investigation.

It was apparent that not all contracts had been forwarded to the Comptroller; therefore, on February 28, 2005, Comptroller SanFilippo sent a memo to all department heads instructing them that all existing service contracts should be forwarded to the Department of Audit and Control by March 31, 2005 and that, effective April 1, 2005, no payment would be authorized to a service vendor unless the service agreement was on file.

Compliance Monitoring

The LWC monitored the compliance of four employers who have acknowledged coverage under the Ordinance. In 2005, the LWC reviewed quarterly reports from BFI Waste Systems, Central Parking, Buffalo Civic Auto Ramps, and, as of April 2005, Pro Park. In several cases, the LWC noted wages that apparently violated the ordinance and followed up with the employer, obtaining a clarification or a wage increase.

Wage Rate

In February 2005, the LWC voted to maintain the living wage rate of 2004 (\$9.03 with health benefits, and \$10.15 without) for the duration of 2005. The LWC recently voted to maintain that rate for 2006 as well and to make new recommendations based on cost of living adjustments for 2007.

Reporting to the City and the Public

The LWC published its first annual report in February 2005 and made it available on the City's website. In 2006, the LWC will add other information to the website, including the Application for Contract and Quarterly Report forms for employers. The LWC's work resulted in six media stories in 2005.

Compliance Coordinator

In 2005, the LWC applied for a grant from The Margaret L. Wendt Foundation to hire a part-time Compliance Coordinator. The objective of the grant is to make the city's contracting processes more rational, efficient, transparent and lawful and to translate the goals of the Living Wage Law into real monetary gains for hundreds of low-wage workers and real monetary savings for the city in the form of better contracting procedures. In short, it is to design and impose an efficient, systematic, publicly open process for letting city contracts. The grant was awarded, and the Compliance Coordinator, Sam Magavern, began work on February 7, 2006.

Full Implementation of the Ordinance: Successes and Challenges

The Living Wage Ordinance has made an important difference to Buffalo. As a result of an impressive amount of volunteer time and work by the Commissioners, the Coalition for Economic Justice staff, legal counsel, Cornell University ILR staff, and UB Law School staff and interns, roughly 160 workers have gained the protection of the Ordinance and are now receiving a living wage.

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.

Goals for 2006

With a new administration led by one of the sponsors of the original Living Wage Ordinance, Mayor Byron Brown, and with the support of The Margaret L. Wendt Foundation grant, 2006 represents an important opportunity for the City to fulfill the promise of the Living Wage Ordinance. For the City to meet its obligations under the Ordinance and ensure that it is applied fairly and equally to all businesses, the LWC will work with other City officials to:

- build understanding and support for the Living Wage in the community;
- report regularly to the public on progress in improving the City's contract procedures;
- undertake new research on the effects and effectiveness of the Living Wage;

- take full advantage of its volunteer base and collaborations, including new resources being committed by the UB Law School;
- ensure that all existing contracts have been reviewed for compliance and organized into an accessible, centralized data base;
- ensure that all future requests for proposals and contracts covered by the Ordinance include the Ordinance's requirements;
- create a system in which employers that are not covered by wage provisions of the Ordinance (for example, because they are subject to prevailing wage laws) are clearly identified;
- ensure that any subcontractors covered by the Ordinance are in compliance;
- bring employers not yet complying with the Ordinance promptly into compliance;
- ensure that the LWC is made aware of any Common Council hearing or other City actions involving the Living Wage Ordinance in a timely manner; and
- adjust the living wage rate to a level appropriate for 2007.

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.

deliberative consideration of legal and contractual issues; those include:

- a. health insurance requirement defined as the best insurance that can be purchased for \$1.12 per hour per employee, that being the dollar amount difference between the mandated hourly wage rates for employees with health insurance and those without health insurance;
- b. health insurance for part-time employees is prorated according to number of hours worked.

Policies and Practices

The Commission has adopted the following approaches and policies:

- approach enforcement by working proactively through city legislative and executive officials to secure the information necessary to assure successful and timely enforcement of the legislation;
- establish standardized procedures for notification of covered employers and monitoring their quarterly reports;
- establish and confirm practices of incorporating living wage requirements as a regular component of the city's bidding procedures and applications for contract;
- pursue obvious and known contracts first while establishing administrative procedures to locate and review all potentially covered contracts and, eventually, subcontracts;
- utilize constructive dialogue approach with identified covered employers to reach compliance agreements where possible;
- develop specific implementation regulations on an as-needed basis following objective research and

2005 Highlights
14 City departments trained
134 contracts reviewed
Pro Park voluntarily complies with Ordinance, granting 21 employees a living wage
Approximately 160 workers are now receiving a living wage because of the Living Wage Ordinance
11 full Commission meetings
6 media reports
4 law student interns
1,590 work hours logged by CEJ staff and interns

Acknowledgements

University at Buffalo School of Law Interns and Professor Sara Faherty

Professor Faherty has maintained an internship whereby selected students receive academic credit for providing legal and administrative support to the Commission. Professor Faherty has also introduced the Living Wage as a research topic for her class on law and inequality. Benjie Gachette and Cheryl Halford interned for the Commission in the Spring, and Claire LaVaute and Allison Milne joined for the Fall of 2005.

Attorneys Stephen Halpern and Sean Ryan

Mr. Halpern and Mr. Ryan provide legal counsel to the Commission. In 2005, Mr. Halpern especially, has been of invaluable support to the Commission in reviewing legislation, reading contracts, attending meetings, and supervising the law students so that their internship is a rich learning experience.

Brennan Center for Justice, New York University School of Law

Attorneys at the Brennan Center, Paul Sonn and David Udell, have made themselves available on larger legal questions regarding living wage legislation in Buffalo and around the country.

Living Wage Resource Center

Jen Kern has made herself available on questions regarding living wage campaigns, ordinances, successes and difficulties around the country.

Buffalo State, Susan M. Davis, Associate Professor, Economics and Finance

Professor Davis continues to provide information to CEJ and the Commission on economic calculations for evaluating living wage rates.

New Living Wage Commissioners for 2006

The Commission welcomes new representatives, Craig Turner (Buffalo Niagara Partnership, Manager, Government Relations) and Tanya Perrin-Johnson (City of Buffalo Commissioner of Community Services).

Coalition for Economic Justice, Maria Whyte, newly elected Erie County Legislator and Allison Duwe, current Executive Director

Maria Whyte and Allison Duwe have been responsible for the administration of the Commission's work and the coordination of activities. They also have provided on-sight field supervision to the law student interns. We would like to thank the CEJ Board of Directors for its continued dedication to both the process and outcome of the living wage movement in Western New York.

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

Cornell has provided to the Commission research updates on living wage legislation and enforcement, administrative support and meeting space. We are grateful to Cornell ILR School for its public service mission and its support of pro bono time for Ms. Fleron to serve as Commission Chair and for the professional staff support of Melanie McMullen.

Frequently Asked Questions

Q: What is a living wage ordinance?

A: Many cities and counties around the country have passed living wage ordinances which require employers to pay wages above the federal or state minimum wage. Only a specific set of workers are covered by living wage ordinances, usually government workers and workers employed by businesses that have a contract with or receive economic development subsidies from the local government. The rationale behind the ordinances is that city and county governments should not contract with or subsidize employers who pay poverty-level wages. The City of Buffalo passed a Living Wage Ordinance in 1999 and amended it in 2002.

Q: What is a living wage?

A: Different people define a living wage differently. Sometimes, it is defined as the amount a full-time worker would need to earn to keep a family of four above the federal poverty level. The federal poverty guideline for a family of four in 2006 is \$20,000. A true living wage varies city by city because it takes into consideration the cost of living (housing, food, child care, health care, transportation, etc.) in each location.

Q: What is the current Buffalo living wage?

A: The current living wage, which will remain in effect through 2006, is **\$9.03 per hour with health insurance or \$10.15 per hour without health insurance**. For someone who works 40 hours a week, that amounts to yearly gross pay of \$18,782 with health insurance or \$21,112 without.

Q: What contracts are covered by the Buffalo Living Wage Ordinance?

A: The Buffalo Living Wage Ordinance provides that employers who contract with the City to provide services (including parking, food, security, janitorial, landscaping, and other services) must pay their employees a living wage. The Ordinance applies to contracts where the City is paying or receiving over \$50,000 and the contractor has more than 10 employees. It covers subcontractors as well.

There are two exceptions. The Ordinance does not apply to contracts for professional services, such as legal and architectural, and it does not apply to employees doing construction work covered by prevailing wage law.

Q: What is the difference between a living wage and a "prevailing wage"?

A: Prevailing wage laws require firms working under a government contract to pay the "prevailing" wage for each job, that is, the wage where half of all workers in the community in the particular job earn more and half earn less. The prevailing wage is different for each occupation and each city or county. Prevailing wage laws ensure that low-wage firms cannot unfairly underbid higher-wage firms when competing for federal or

state government contracts. The Buffalo Ordinance does not apply to construction workers who are covered by prevailing wage laws.

Q: How often will the Living Wage change?

A: Buffalo's Living Wage does not change automatically. The City Council and Mayor may amend the Ordinance to reflect changes in the cost of living. The Living Wage Commission is planning recommendations for a new rate to take effect in 2007.

Q: What duties do employers have if covered by the ordinance?

A: In addition to paying the living wage, employers must do three things: (1) fill out an application for contract, including a commitment to pay the living wage, when bidding on a City service contract; (2) file quarterly reports with the Living Wage Commission; (3) post two copies of the Ordinance or an employer poster designed by the Living Wage Commission in a conspicuous place on their premises.

Q: Does the Buffalo Ordinance apply to subcontractors?

A: Yes. Any subcontractor who provides services to a covered employer is also covered by the Ordinance. In other words, if the contractor is covered, then all the subcontractors are covered, no matter how small the subcontract or how few the employees. Subcontractors do not have to fill out the application for contract, but they do need to file quarterly reports and post the Ordinance or employer poster.

Q: Does the Buffalo Ordinance apply when the contractor is paying the City?

A: 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.

Q: Does the Buffalo Ordinance cover part-time employees?

A: Yes.

Q: Does the Buffalo Ordinance cover City employees?

A: Yes. The Ordinance defines the City of Buffalo as a "covered employer" which must pay the living wage.

Q: Are there any possible exemptions to the Buffalo Ordinance?

A: Yes. There are possible exemptions for non-profit organizations and for summer youth programs, school-to-work programs, and other related seasonal part-time work for youth under age 21. For an exemption to be made, the Mayor must request it of the Common Council which must then grant the exemption.

Q: Who has been affected by the Buffalo Ordinance so far?

A: As of April 2006, five companies were filing regular reports with the Living Wage Commission: BFI Waste Systems, Pro Park, Central Parking, Mercantile Adjustment

Bureau, and Buffalo Civic Auto Ramps. Roughly 160 employees at these companies had received raises to meet the living wage ordinance.

Q: How will employees know about the living wage?

A: Employers are required to post, in a conspicuous place, notification of employees' rights under this ordinance.

Q: Do living wage ordinances cause job loss?

A: The Economic Policy Institute's (EPI) evaluation of Baltimore's living wage ordinance found no job loss as a result of the ordinance (Niedt et al. 1999). The majority of workers interviewed for the study reported no changes in the number of hours they worked after the ordinance went into effect. Employers interviewed for another study reported that although wages increased, these costs were absorbed by improvements in efficiency; raising wages decreased employee turnover, which decreased recruitment and training costs.

The evidence from minimum wage increases also suggests that there should be little or no job loss as a result of living wage ordinances. A recent EPI study failed to find any systematic, significant job loss associated with the 1996-97 minimum wage increase (Bernstein and Schmitt 1998).

Q: What if an employee believes the contractor is not paying the living wage?

A: An employee who believes his/her employer is not complying with the Ordinance has the right to file a grievance with the Living Wage Commission. Employees also have the right to file a lawsuit. Employers are prohibited from punishing employees for filing a grievance or lawsuit. Grievances may be filed anonymously, as well.

To file a grievance or ask any question about the Ordinance, you can call the Living Wage Commission at 852-4191. Or you can send a letter to the Living Wage Commission, c/o Cornell University ILR, 237 Main St., Suite 1200, Buffalo NY 14203.

Q: What sanctions are possible if an employer violates the Ordinance?

A: Possible sanctions include wage restitution for affected employees, suspension or termination of the City's contract with the employer, withholding of payment from the City to the employer, and ineligibility for City contracts for up to three years.

Q: If I have other questions, how may I get them answered?

A: By contacting the Living Wage Commission at 716-852-4191.

Source:
Economic Policy Institute (EPI), http://www.epi.org/content.cfm/issueguides_livingwage_livingwagefaq

City of Buffalo Living Wage Ordinance

At A Glance

Living Wage Commission
Buffalo, New York
February 2006

Living Wage Requirements

2005-2006

- **\$ 9.03** per hour **with** health benefits
- **\$10.15** per hour **without** health benefits

There is an ongoing effort to escalate the living wage to more accurately reflect Consumer Price Index annual increases.

Contracts Covered by LWO

- Contracts totaling \$50,000 or more
- Contracts for services, such as security guards, parking attendants, landscaping, clerical, food-service and janitorial services
- Employers with more than 10 employees

Responsibility of City Department Heads

- Include Living Wage requirements in all contract solicitations
- Provide Living Wage Commission access to all current contracts
- Provide Living Wage Commission notification of all new contracts

Responsibility of City Department Heads

- Obtain Application for Contract from prospective employer at the time bid is submitted; forward a copy to Living Wage Commission
- 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 City Department within 60 days

LWC Powers: Sanctions for Noncompliance

- Receive complaints, investigate and hold hearings
- Issue written findings in connection with hearings and investigations of complaints
- Recommend sanctions in connection with findings of non-compliance. Possible sanctions include wage restitution for the affected employees and suspension or termination of ongoing contracts and ineligibility for further city contracts for up to three years