

BEFORE THE
LABOR AND INDUSTRIAL RELATIONS COMMISSION
JEFFERSON CITY, MISSOURI

APR - 4 2019
LABOR AND INDUSTRIAL
RELATIONS COMMISSION

In the Matter of: **Objection to Annual Wage Order No. 26, Issued in March 2019, as it Pertains to the Occupational Title of "Operating Engineer" in multiple counties within Missouri, Which Counties are Within the Objector's Geographic Jurisdiction**

On Behalf of: **Local 513, International Union of Operating Engineers, Objector.**

OBJECTION

COMES NOW the Local 513, International Union of Operating Engineers ("Objector") and files its Objections to Annual Wage Order No. 26, issued in March 2019 by the Missouri Division of Labor Standards, and for its Objection states as follows:

1. Objector is an unincorporated association representing members who perform work in the construction trades and specifically under the Occupational Title "Operating Engineer," as defined in 8 C.S.R. 30-3.060, throughout the eastern half of the State of Missouri of the type covered by R.S.Mo. § 290.210, *et seq.* (the "Missouri Prevailing Wage Law"). These individual bargaining unit members also perform work of the type at issue in this Objection on a regular basis. Through well-established precedent, the Objector has historically been permitted to represent the interests of its members before the Labor and Industrial Relations Commission, as have other unincorporated associations, on matters of Objections to proposed Annual Wage Orders.

2. Adair County is subject to the Missouri Prevailing Wage Law.
3. Putnam County is subject to the Missouri Prevailing Wage Law.
4. Clark County is subject to the Missouri Prevailing Wage Law.
5. Knox County is subject to the Missouri Prevailing Wage Law.
6. Lewis County is subject to the Missouri Prevailing Wage Law.

7. Macon County is subject to the Missouri Prevailing Wage Law.
8. Marion County is subject to the Missouri Prevailing Wage Law.
9. Monroe County is subject to the Missouri Prevailing Wage Law.
10. Montgomery County is subject to the Missouri Prevailing Wage Law.
11. Pike County is subject to the Missouri Prevailing Wage Law.
12. Ralls County is subject to the Missouri Prevailing Wage Law.
13. Randolph County is subject to the Missouri Prevailing Wage Law.
14. Schuyler County is subject to the Missouri Prevailing Wage Law.
15. Scotland County is subject to the Missouri Prevailing Wage Law.
16. Shelby County is subject to the Missouri Prevailing Wage Law.
17. Warren County is subject to the Missouri Prevailing Wage Law.
18. Audrain County is subject to the Missouri Prevailing Wage Law.
19. Crawford County is subject to the Missouri Prevailing Wage Law.
20. Dent County is subject to the Missouri Prevailing Wage Law.
21. Gasconade County is subject to the Missouri Prevailing Wage Law.
22. Maries County is subject to the Missouri Prevailing Wage Law.
23. Miller County is subject to the Missouri Prevailing Wage Law.
24. Moniteau County is subject to the Missouri Prevailing Wage Law.
25. Morgan County is subject to the Missouri Prevailing Wage Law.
26. Osage County is subject to the Missouri Prevailing Wage Law.
27. Phelps County is subject to the Missouri Prevailing Wage Law.
28. Pulaski County is subject to the Missouri Prevailing Wage Law.
29. Washington County is subject to the Missouri Prevailing Wage Law.

30. Butler County is subject to the Missouri Prevailing Wage Law.
31. Carter County is subject to the Missouri Prevailing Wage Law.
32. Howell County is subject to the Missouri Prevailing Wage Law.
33. Oregon County is subject to the Missouri Prevailing Wage Law.
34. Reynolds County is subject to the Missouri Prevailing Wage Law.
35. Shannon County is subject to the Missouri Prevailing Wage Law.
36. Texas County is subject to the Missouri Prevailing Wage Law.
37. Wayne County is subject to the Missouri Prevailing Wage Law.
38. Bollinger County is subject to the Missouri Prevailing Wage Law.
39. Cape Girardeau County is subject to the Missouri Prevailing Wage Law.
40. Dunklin County is subject to the Missouri Prevailing Wage Law.
41. Iron County is subject to the Missouri Prevailing Wage Law.
42. Madison County is subject to the Missouri Prevailing Wage Law.
43. Mississippi County is subject to the Missouri Prevailing Wage Law.
44. New Madrid County is subject to the Missouri Prevailing Wage Law.
45. Pemiscot County is subject to the Missouri Prevailing Wage Law.
46. Perry County is subject to the Missouri Prevailing Wage Law.
47. Ripley County is subject to the Missouri Prevailing Wage Law.
48. Scott County is subject to the Missouri Prevailing Wage Law.
49. Ste. Genevieve County is subject to the Missouri Prevailing Wage Law.
50. Stoddard County is subject to the Missouri Prevailing Wage Law.

51. A review of the hours submitted on a project by a contractor working in Adair, Putnam, Lewis, Macon, Monroe, Montgomery, Randolph, Schuyler, Dent, Gasconade, Maries,

Morgan, Washington, Carter, Reynolds, Texas, Bollinger, Madison, Mississippi, Pemiscot, Perry, and Ripley counties, Missouri (hereinafter “**Building & H/H Counties**”) reveals that the basic hourly rates and total fringe benefits in proposed Annual Wage Order No. 26 for both building and heavy and highway work are incorrect in that they do not take into consideration the average hourly wage as determined by the Missouri economic research and information center within the department of economic development for hours worked in the **Building & H/H Counties** counties, Missouri for determining the public works contracting minimum wage for the occupational title Operating Engineer.

52. A review of the hours submitted on a project by a contractor working in Clark, Knox, Marion, Pike, Ralls, Shelby, Warren, Audrain, Crawford, Moniteau, Pulaski, Butler, Howell, Oregon, Shannon, Wayne, Cape Girardeau, Dunklin, Iron, New Madrid, Scott, Ste. Genevieve, and Stoddard counties, Missouri (hereinafter “**Building Only Counties**”) reveals that the basic hourly rates and total fringe benefits in proposed Annual Wage Order No. 26 for building work are incorrect in that they do not take into consideration the average hourly wage as determined by the Missouri economic research and information center within the department of economic development for hours worked the **Building Only Counties** for determining the public works contracting minimum wage for the occupational title Operating Engineer.

53. A review of the hours submitted on a project by a contractor working in Phelps County, Missouri (hereinafter “**Phelps County**”) reveals that the basic hourly rates and total fringe benefits in proposed Annual Wage Order No. 26 for building work are incorrect in that they do not take into consideration the average hourly wage as determined by the Missouri economic research and information center within the department of economic development for hours worked in **Phelps County**, Missouri for determining the public works contracting minimum wage for the

occupational title Operating Engineer and do not take into consideration those hours worked in the title Operating Engineer in Phelps County, Missouri.

54. A review of the hours submitted on a project by a contractor working in Scotland, Miller, and Osage counties, Missouri (hereinafter “**H/H Only Counties**”) reveals that the basic hourly rates and total fringe benefits in proposed Annual Wage Order No. 26 for heavy and highway work are incorrect in that they do not take into consideration the average hourly wage as determined by the Missouri economic research and information center within the department of economic development for hours worked in the **H/H Only Counties**, Missouri for determining the public works contracting minimum wage for the occupational title Operating Engineer.

55. The rates in proposed Annual Wage Order No. 26 for the “Operating Engineer” Occupational Title in the **Building & H/H Counties, Building Only Counties, H/H Only Counties, and Phelps County** are reflected in the charts attached hereto as **Exhibit A**. The Division of Labor Standards used this rate because fewer than 1,000 hours were submitted pursuant to R.S.Mo. § 290.257.2.

56. In 2018, 1,674 hours of work designated as “Operating Engineer” construction work was performed by employees of Donald Maggi, Inc., within **Phelps County**. During the period of May 1, 2018 through December 31, 2018, Donald Maggi, Inc., paid Operating Engineers at the rate of \$29.16 in wages and \$27.06 in fringe benefits for building construction work. All hours were submitted pursuant to Donald Maggie, Inc.’s collective bargaining agreement with Objector. Objector is prepared to present evidence in the forms of payroll and contractor surveys to establish the following hours actually worked and the foregoing rate in **Phelps County**.

57. These **Phelps County** rates, as described, are not only the appropriate rates, there are also workmen ready, willing and able to perform work in **Phelps County** at such rates. Such

workmen, in fact, have performed such work at such rates, as evidenced in the attached contractor surveys. Workers performed at these rates in these localities to a greater extent than work performed at the published rate in the objected to proposed Annual Wage Order, and such work has been performed to a greater extent at all times pertinent to the Annual Wage Order at issue. These 1,674 hours are reflective of the objected hours that prevail in the locality at issue and performed under an appropriate collective bargaining agreement. This report is attached as **Exhibit B**.

58. For counties that have less than 1,000 reported contractor hours for a particular occupational title, such as Operating Engineer, RSMo. 290.257.2 establishes the calculation for a construction minimum wage. The **Building & H/H Counties, Building Only Counties, H/H Only Counties** are subject to the RSMo. 290.257.2 construction minimum wage for the occupations title Operating Engineer. However, the AWO 26 rates reflected in **Exhibit A** are incorrect as they do not reflect the Missouri economic research and information center calculation for the occupational title Operating Engineer. The correct rates are reflected in **Exhibit A** as 120% of the Missouri economic research and information center calculation for Operating Engineer for each appropriate locality. The wage date may be found in an Excel File found on the MERIC webpage found here : https://www.missourieconomy.org/occupations/occ_wages.stm

WHEREFORE, it is respectfully requested that the Labor and Industrial Relations Commission consider favorably the Objection of Objector and revise the basic hourly rate and total fringe benefit in the **Building & H/H Counties, Building Only Counties, H/H Only Counties, and Phelps County** for the “Operating Engineer” classification, as described herein, to

reflect the prevailing practices throughout the geographic jurisdiction in question, and for such other changes as are deemed appropriate.

Respectfully submitted,

HARTNETT REYES-JONES, LLC



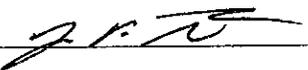
JAMES P. FAUL, No. 58799
4399 Laclede Avenue
St. Louis, Missouri 63108
Telephone: 314-531-1054
Facsimile: 314-531-1131
jfaul@hrjlaw.com

Attorneys for Objector

CERTIFICATE OF SERVICE

An original and two (2) copies of the foregoing were served on the Administrative Secretary, Labor and Industrial Relations Commission, 3315 West Truman Boulevard, P.O. Box 599, Jefferson City, MO 65102-0599, *via facsimile* at 573-751-7806 and by UPS, and copies were served on the following by placing same, postage prepaid, in the U. S. Mail this 4th day of April, 2019:

Taylor Burks, Director
Division of Labor Standards
3315 West Truman Boulevard
P.O. Box 449
Jefferson City, MO 65102-0449



Both Building and Heavy/Highway Rates

NORTHWEST WORKFORCE DEVELOPMENT AREA (WDA)

COUNTY	AWO 26 BUILDING	AWO 26 H/H	MERIC RATE -- Operating Engineer	120% of MERIC RATE
Putnam	16.34	16.34	\$20.90	25.08

NORTHEAST WORKFORCE DEVELOPMENT AREA (WDA)

COUNTY	AWO 26 BUILDING	AWO 26 H/H	MERIC RATE -- Operating Engineer	120% of MERIC RATE
Adair	19.19	19.19	\$23.07	\$27.68
Lewis	18.62	18.62	\$23.07	\$27.68
Macon	18.78	18.78	\$23.07	\$27.68
Monroe	18.42	18.42	\$23.07	\$27.68
Montgomery	20.06	20.06	\$23.07	\$27.68
Randolph	21.25	21.25	\$23.07	\$27.68
Schuyler	14.90	14.90	\$23.07	\$27.68

CENTRAL WORKFORCE DEVELOPMENT AREA (WDA)

COUNTY	AWO 26 BUILDING	AWO 26 H/H	MERIC RATE -- Operating Engineer	120% of MERIC RATE
Dent	17.50	17.50	\$23.51	\$28.21
Gasconade	17.63	17.63	\$23.51	\$28.21
Maries	17.46	17.46	\$23.51	\$28.21
Morgan	16.63	16.63	\$23.51	\$28.21
Washington	17.23	17.23	\$23.51	\$28.21

SOUTH CENTRAL WORKFORCE DEVELOPMENT AREA (WDA)

COUNTY	AWO 26 BUILDING	AWO 26 H/H	MERIC RATE -- Operating Engineer	120% of MERIC RATE
Carter	15.53	15.53	\$18.88	\$22.66
Reynolds	19.66	19.66	\$18.88	\$22.66
Texas	17.60	17.60	\$18.88	\$22.66

SOUTHEAST WORKFORCE DEVELOPMENT AREA (WDA)

COUNTY	AWO 26 BUILDING	AWO 26 H/H	MERIC RATE -- Operating Engineer	120% of MERIC RATE
Bollinger	17.15	17.15	\$25.72	\$30.86
Madison	17.46	17.46	\$25.72	\$30.86
Mississippi	18.19	18.19	\$25.72	\$30.86
Pemiscot	17.02	17.02	\$25.72	\$30.86
Perry	21.91	21.91	\$25.72	\$30.86
Ripley	14.73	14.73	\$25.72	\$30.86

Building Only

NORTHEAST WORKFORCE DEVELOPMENT AREA (WDA)

COUNTY	AWO 26 BUILDING	MERIC RATE – Operating Engineer	120% of MERIC RATE
Clark	\$15.31	\$23.07	\$27.68
Knox	\$15.99	\$23.07	\$27.68
Marion	\$21.69	\$23.07	\$27.68
Pike	\$19.06	\$23.07	\$27.68
Ralls	\$25.95	\$23.07	\$27.68
Shelby	\$16.72	\$23.07	\$27.68
Warren	\$22.23	\$23.07	\$27.68

CENTRAL WORKFORCE DEVELOPMENT AREA (WDA)

COUNTY	AWO 26 BUILDING	MERIC RATE – Operating Engineer	120% of MERIC RATE
Audrain	\$20.91	\$23.51	\$28.21
Crawford	\$21.04	\$23.51	\$28.21
Moniteau	\$20.21	\$23.51	\$28.21
Pulaski	\$21.94	\$23.51	\$28.21

SOUTH CENTRAL WORKFORCE DEVELOPMENT AREA (WDA)

COUNTY	AWO 26 BUILDING	MERIC RATE – Operating Engineer	120% of MERIC RATE
Butler	\$19.69	\$18.88	\$22.66
Howell	\$18.37	\$18.88	\$22.66
Oregon	\$14.50	\$18.88	\$22.66
Shannon	\$14.80	\$18.88	\$22.66
Wayne	\$14.69	\$18.88	\$22.66

SOUTHEAST WORKFORCE DEVELOPMENT AREA (WDA)

COUNTY	AWO 26 BUILDING	MERIC RATE – Operating Engineer	120% of MERIC RATE
Cape Girardeau	\$17.15	\$25.72	\$30.86
Dunklin	\$16.03	\$25.72	\$30.86
Iron	\$22.70	\$25.72	\$30.86
New Madrid	\$20.28	\$25.72	\$30.86
Scott	\$21.38	\$25.72	\$30.86
Ste. Genevieve	\$25.06	\$25.72	\$30.86
Stoddard	\$21.03	\$25.72	\$30.86

Heavy-Highway Only

NORTHEAST WORKFORCE DEVELOPMENT AREA (WDA)

COUNTY	AWO 26 BUILDING	MERIC RATE – Operating Engineer	120% of MERIC RATE
Scotland	\$18.20	\$23.07	\$27.68

CENTRAL WORKFORCE DEVELOPMENT AREA (WDA)

COUNTY	AWO 26 BUILDING	MERIC RATE – Operating Engineer	120% of MERIC RATE
Miller	\$18.53	\$23.51	\$28.21
Osage	\$20.72	\$23.51	\$28.21

Phelps County

PHELPS

COUNTY	AWO 26 Buildiug	MERIC RATE -- Operating Engineer	120% of MERIC RATE	Uncounted Hours	Uncounted Rate
Phelps	\$22.78	\$23.51	\$28.21	1,674*	\$56.22

* The Contractor's Wage Survey previously submitted by Donald Maggi, Inc., is attached to this objection.



**DIVISION OF
LABOR
STANDARDS**

MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
CONTRACTOR'S WAGE SURVEY

PROJECT INFORMATION	
Contractor's Name, Address, and Phone Number Donald Maggi Inc. P.O. Box 66 Rolla MO 65402	Project Name:
Dates of Work Reported Below Beginning <u>05 / 01 / 2018</u> Ending <u>12 / 31 / 2018</u>	County <u>Phelps</u>
	Description _____
Email <u>maggiconst@gmail.com</u>	Type of Construction: <input checked="" type="checkbox"/> Building <input type="checkbox"/> Heavy and Highway
	Website _____

Occupational Title(s)	Total Hours	Basic Hourly Rate	Hourly Fringe Benefits Payments						
			H & W	Pension	Vacation	App. Tr.	Suppl.	Holiday	Other
Operating Engineer - Group I	1674	29.16	9.36	12.00		1.00			4.70

The Contractor's Wage Survey must be submitted to the Division of Labor Standards by January 31.

Certification

I am the Contractor for the above-named project. To the best of my knowledge, information and belief, I hereby certify that the number of hours, basic hourly rate, and fringe benefit payments listed above are true and correct and that the type of work performed by the number of employees identified above, relative to the Occupational Title(s) reported, is consistent with CSR 30-3.060. I further recognize that any false statement or declaration made hereto is punishable under Sections 290.340, 570.090, 575.050, and 575.060, RSMo.

Email completed form to: prevailingwage@labor.mo.gov
Or
Mail or fax completed form to:
Missouri Department of Labor and Industrial Relations
DIVISION OF LABOR STANDARDS
Attn: Prevailing Wage Section
P.O. Box 449
Jefferson City, MO 65102-0449

Date 01/09/2019 Rev. 3/2019
Signature /s/ Rachel Benton
Printed Name Rachel Benton
Title Corporate Secretary

Contact Information:
Phone: 573-751-3403
Fax: 573-751-3721
Email: prevailingwage@labor.mo.gov
Website: www.labor.mo.gov/DLS