

ON PETITION FOR REVIEW * BEFORE THE
OF PREVAILING WAGE * COMMISSIONER OF LABOR
RATES * AND INDUSTRY
* PWU-25-02

* * * * *

DECISION AND ORDER

This matter arose under the Prevailing Wage Law, State Finance and Procurement Article §§ 17-201 through 17-226, *Annotated Code of Maryland*. On December 18, 2025, the International Union of Operating Engineers Local 37, AFL-CIO ("Local 37") filed a verified petition for review with the Maryland Commissioner of Labor and Industry ("Commissioner") seeking review of the prevailing wage rates for Highway Power Equipment Operator (Paver, Milling Machine and Asphalt Roller) in Anne Arundel, Baltimore, Harford, Howard Counties and Baltimore City.¹ Upon receipt of the petition, the Commissioner initiated an investigation and, pursuant to §17-211(d) of the State Finance and Procurement Article, conducted a hearing on the petition on January 12, 2026, at the Division of Labor and Industry at 10946 Golden West Drive, Hunt Valley, Maryland 21031.

EXHIBITS

At the hearing, the following exhibits were offered and entered.

¹The Local 37 petition also sought review of certain power equipment classifications in Allegany County. On December 30, 2025, Local 37 withdrew its challenge to the Allegany County rate determination.

Commissioner Exhibits

<u>No.</u>	<u>Description</u>	<u>Dated</u>
1.	Verified Petition for Review Local 37	12/18/25
2.	Commissioner Letter to Local 37 Counsel re: challenge filed	12/23/25
3.	Local 37 counsel letter	12/30/25
4.	Affidavit of Michael Stromberg	1/06/26
5.	Hearing Notice	1/06/26
6.	Hearing Notice through Gov Delivery	1/06/26

Petitioner's Exhibits

1. Local 37 Counsel Letter with attachments 12/30/25
2. Flanigan Aggregated Data of Rates

FINDINGS OF FACT

Based on the testimony and exhibits presented at the hearing, the Commissioner finds the following facts:

1. On December 18, 2024, Local 37 filed a verified petition for review of the rate for power equipment operator classifications: Paver, Milling Machine and Asphalt Roller for Anne Arundel, Baltimore, Harford and Howard counties and Baltimore City. (Commissioner Ex. 1)

2. In its petition, Local 37 alleges that the wage determinations for the named classifications do not include the submittals of contractor P. Flanigan and Sons, Incorporated ("Flanigan"). (Commissioner Exhibit 1)
3. The petition requested the following: (1) that the Commissioner rescind the wage determinations issued on December 10, 2025 for the following power equipment operator classifications for Anne Arundel, Baltimore, Harford, Howard counties and Baltimore City; (2) that the Commissioner conduct a full investigation of the Survey Data that was considered in issuing its December 10, 2025 determinations and that the Commissioner exclude from consideration for future determinations any data that is unreliable; (3) that any revised wage determinations for power equipment operator classifications of Paver, Milling Machine, and Asphalt Roller for Anne Arundel, Baltimore, Harford, Howard counties and Baltimore City consider the survey submittals of Flanigan; and (4) that the Commissioner issue any further relief as appropriate. (Commissioner Exhibit 1)
4. On December 23, 2025, the Commissioner acknowledged receipt of the Petition for Review and requested more information to consider the claims in the Petition. (Commissioner Exhibit 2) More specifically with respect to the submittals of Flanigan, the Commissioner requested "further information in support of your contention, including any evidence that such submissions were in fact made."
5. On December 30, 2025, Local 37 responded to the Commissioner's request for additional information. (Commissioner Exhibit 3) Local 37 stated that Flanigan has been submitting prevailing wage data for inclusion in making prevailing wage

determinations for decades. It further explained that during the period of October 22-29, 2025, Flanigan electronically submitted wage data as part of the Division's annual survey. Flanigan asserted that it created a wage data document broken down by employee, which it attached to its response, for the sole purpose of submitting the data as part of the survey. It also acknowledged that it does not have a confirmation document that the October 2025 submittals were received. Flanigan asserts that any error on its part was an inadvertent mistake. Local 37 argues that the mistake should be excused for "good cause" under COMAR .21.11.11.07D. Local 37 requested that the Commissioner consider the Flanigan wage data and revise the wage determinations accordingly. Flanigan offered to resubmit the applicable wage data.

6. In support of a showing of good cause, Local 37 submitted the affidavit of Michael Stromberg. (Commissioner Exhibit 4) Mr. Stromberg is the controller of Flanigan and the official responsible for making the 2025 wage data submissions to the survey. Mr. Stromberg explained that he gathered wage related data from the company's projects in Anne Arundel, Baltimore, Harford and Howard Counties and Baltimore City for the purpose of submitting the data to the survey. He describes that he logged into the Department website during the period of October 22-29, 2025, identifies his user name, and believes that he submitted the wage data. He notes that the company would not have taken the time to gather the wage data if it did not intend to submit it to the Division. He also asserts that the wage data is "accurate and complete and we possess certified payroll, payroll registers, and direct

deposit documents as backup." He states that if he failed to complete the submission, it was an inadvertent error on his part.

7. On December 18, 2025, wage determinations were issued to the Maryland Department of Transportation (MOOT), State Highway Administration (Determination Nos. 64476, 64483, 64646 & 64553) and MOOT Maryland Transit Administration (Determination No. 64826)² for public work projects using the challenged rates in Anne Arundel, Baltimore, Harford, Howard counties and Baltimore City. Before a public body issues a call for bids or proposals for a public work contract, it must request a wage determination setting forth the prevailing wage rate for each classification of worker to perform work under the contract.
8. On January 6, 2026, the Commissioner issued a Notice of Hearing on Local 37's challenge. The relevant parties that needed to be served under the law were served with notice. The notice was posted on the Division's website and sent to registrants in the Division's prevailing wage database through the online platform "GovDelivery." (Commissioner Exs. 5-6)
9. A hearing was conducted on January 12, 2025, At the hearing, counsel for the Commissioner and Local 37 offered the exhibits identified above. Mr. Stromberg testified at the hearing and confirmed the accuracy of his statements in his affidavit. He testified that he believed that he had successfully submitted the data and noted that this was his first time in actually submitting the wage data into the system.

² The Commissioner takes judicial notice of these wage determinations.

Transcript of 1/12/26 Hearing (Tr.) at 19. He also explained that Petitioner Exhibit 2 is the aggregated data including wage and fringe benefits paid that he thought he had submitted on behalf of Flanigan. (Tr. at 30-31) He testified that he directly pulled the data from the company's payroll systems. (Tr. at 33-34) The Local 37 requests that the Commissioner include the information contained in Petitioner Exhibit 2 in the 2025-2026 determination. (Tr. at 30-31)

ANALYSIS

COMAR 21.11.11.07D(3)(b)(v) provides that if a hearing involves a petition for review then wage data or collective bargaining agreements submitted by the petitioner that were not produced prior to the original wage rate determination shall be introduced upon a showing of good cause why such evidence was not produced in a timely manner. In evaluating what constitutes good cause under this section, it is helpful to look at what Maryland courts have considered in determining good cause under other laws. The test of ordinary prudence - namely what an ordinarily prudent person would have done under the same or similar circumstances has been applied in different contexts. *See Moore v. Norouzi*, 371 Md. 154, 179 (2002) (ordinarily prudent person test used in defining good cause for late filing under public tort claims act); *In re MM & A.M.*, 267 Md. App 102, 111 (2025) (ordinarily prudence person test used in guardianship matter to determine good cause). Under the ordinary prudence test, courts have considered excusable neglect or mistake. *See White v. Prince George's County*, 163 Md. App 129, 151 (2005). The Commissioner finds that the ordinary prudence test is appropriate to determine good cause in this case.

Here, once Flanigan determined that its submission had not been included in the 2025-2026 wage rates, the Petitioner filed a timely petition for review of the applicable rates. The Petitioner then provided a timely response to the Commissioner's request for additional information that included the wage data compiled by Flanigan for the survey. Subsequently, Petitioner submitted an affidavit from Flanigan's controller Mr. Stromberg describing his efforts to submit the company's wage data in the survey. Mr. Stromberg acknowledged that if he failed to complete the submission of the wage data into the survey that it was inadvertent error. Finally, Mr. Stromberg attested to the accuracy of the data and offered to provide all supporting data. The Commissioner finds that Flanigan's failure to submit was a mistake and that the Petitioner has taken all steps that an ordinarily prudent person would have taken to promptly address the situation. Based upon these facts, the Commissioner concludes that Local 37 has demonstrated good cause as to why the wage data was not produced in a timely manner.

FINDINGS AND ORDER

Upon consideration of the evidence and the arguments raised, the Commissioner finds and orders as follows:

Local 37 has demonstrated good cause as to why Flanigan's wage data was not produced in a timely manner. In light of this finding, Flanigan's wage rates for the power equipment operator classifications of Paver, Milling Machine and Asphalt Roller for Anne Arundel, Baltimore, Harford and Howard counties and Baltimore City will be included in the 2025-2026 wage determination. Local 37 is directed to have Flanigan submit the applicable wage data for inclusion in the survey on the attached "Template To Add Survey

Records." Flanigan's submission of wage data is due to the Prevailing Wage Unit no later than close of business on January 26, 2026 so that the revised rates can be issued promptly.

/s/ Devki K. Virk

Devki K. Virk, Commissioner

1/22/2026

Date