



Issue Date: 27 February 2012

**BALCA Case Nos.: 2011-PWD-00001
2011-PWD-00002**

ETA Case Nos.: P-100-11021-128882
P-200-11021-597182

In the Matter of:

EMORY UNIVERSITY,
Employer

Center Director: William K. Rabung
National Prevailing Wage Center

Appearances: William A. Stock, Esquire
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For the Employer

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Division of Employment and Training Legal Services
Washington, DC
For the Certifying Officer

Before: **Colwell, Johnson and Vittone**
Administrative Law Judges

DECISION AND ORDER
AFFIRMING PREVAILING WAGE DETERMINATIONS

These matters arise from the Employer's appeals pursuant to 20 C.F.R. § 655.731(a)(2)(ii)(A)(1) and 20 C.F.R. § 656.41 of the Employment and Training

Administration, Office of Foreign Labor Certification's prevailing wage determinations relating to the Employer's applications for H-1B temporary labor certification and permanent alien labor certification. On October 6, 2011, the Employer filed a *Motion to Consolidate* these appeals on the ground that they are not legally or factually distinct from one another. The Board finds that consolidation of these two appeals is appropriate under 29 C.F.R. § 18.11.

BACKGROUND

On January 21, 2011, Emory University ("Employer") filed a prevailing wage determination ("PWD") request with the Office of Foreign Labor Certification National Prevailing Wage Center ("NPWC") for the position of "Supervisor, Clinical Genetics Laboratory." (AF 43-55).¹ The Employer provided the suggested Standard Occupational Classification ("SOC")/ Occupational Informational Network ("O*Net") code as 19-1029.00, corresponding to occupation title "Biological Scientists, All Other." (AF 43). The Employer provided the following summary of the position's duties:

Will perform clinical laboratory testing of high complexity in a clinical environment. Assist in the review, interpretation and reporting of complex and routine test results. Helps to coordinate workflow and oversee quality control activities in the laboratory. Assists in the development of new protocols in clinical research programs. Provides technical guidance and training to employees and students. Maintains required record keeping and adheres to laboratory policies and procedures. Clinical genetics laboratory supervisor supervises clinical laboratory technical and support staff within the laboratory. Conducts staff evaluations and assists in inventory control, expense management and strategic planning. Coordinates quality monitoring, equipment evaluation, staff orientation and education, research and safety control. Performs related responsibilities as required.

(AF 44). The Employer also stated that the position required a Bachelor's degree in biology or related scientific discipline, and required 60 months of experience in a clinical genetics molecular lab, or related lab experience. (AF 45). Additionally, the Employer stated that certification as an International Technologist in Molecular Biology

¹ In this decision, AF is an abbreviation for Appeal File and refers to the appeal file assembled in BALCA Case No. 2011-PWD-1, ETA Case No. P-100-11021-128882, which involves the PWD for a PERM application.

(“MB”) by the American Society of Clinical Pathology (“ASCP”) accrediting agency was required for the position. *Id.*

The Certifying Officer (“CO”) issued a PWD on February 10, 2011. (AF 46). The CO assigned the position the SOC (ONET/OES) occupation title “Natural Sciences Managers,” SOC (ONET/OES) code 11-9121.00. *Id.* The CO determined that the wage level for the position was level 3, with a prevailing wage of \$124,467.00 per year. *Id.* The wage was determined pursuant to the American Competitiveness and Workforce Improvement Act (“ACWIA”). *Id.*

On February 21, 2011, the Employer submitted a redetermination request for the prevailing wage. (AF 42). The Employer asserted that that occupation of “Geneticists,” O*Net code 19-1029.03, is a better match for the job opportunity, which includes managerial duties. *Id.* On March 10, 2011, the CO affirmed the PWD. (AF 41). The CO stated that the job duties under the “Geneticist” occupation title do not encompass the O*Net defined tasks for the position, which include “research and study of the inheritance of traits at the molecular, organism or population level.” *Id.* The CO found that the position’s duties are consistent with the O*Net defined tasks for the “Natural Sciences Manager” occupation title. *Id.*

The Employer submitted a request for review to the Center Director (“CD”) on April 6, 2011. (AF 20-40). The Employer argued that the CO misclassified the job opportunity, and that based on the job duties, “Geneticist” is a more appropriate occupational title. (AF 21). Additionally, the Employer argued that if “Natural Sciences Manager” is the appropriate O*Net occupation, the wage level should be level 1, rather than level 3. *Id.* The Employer provided a list of the job’s defined tasks compared to the defined tasks for Geneticists and Natural Sciences Managers in support of its argument that the job opportunity is most closely aligned with the occupation of “Geneticist.” (AF 22-23). Specifically, the Employer noted that while the “Supervisor, Clinical Genetics Laboratory” position requires clinical laboratory testing and the review, interpretation, and reporting of test results, genetic testing and review of test results are not elements of the Natural Sciences Manager occupation. (AF 22). The Employer argued that many of the primary job duties, including conducting actual genetics research, reviewing and interpreting the results of the genetics research projects, coordinating laboratory

workflow, and maintaining the required recordkeeping for the laboratory, are not included in the Natural Science Managers occupation, but are included in the Geneticist occupation. (AF 23).

In addition, the Employer argued that even if Natural Sciences Managers is the appropriate occupation title, a level 3 wage is inappropriate under the Department of Labor's *Prevailing Wage Determination Policy Guidance, November 2009* ("2009 PWD Guidance" or "PWD Guidance Letter"). (AF 24). The Employer stated that the Natural Sciences Managers occupation is a Job Zone 5 occupation, with a Standard Vocational Preparation ("SVP") range of 8 and above. (AF 25). The Employer asserted that no additional points should be added for education, as the Employer only requires a Bachelor's degree, while O*Net indicates that most "Natural Sciences Managers" positions require graduate school. *Id.* Additionally, the Employer contended that at most, only one additional point should be added for experience, because the Employer's 60-month experience requirement is at the low end of the SVP range, which allows for over four years and up to 20 or 30 years of experience. *Id.* The Employer also asserted that no additional points should be added for supervisory experience, since according to O*Net, this is a normal job duty requirement for the occupation. *Id.* Finally, the Employer argued that no additional points should be added for certification as a MB by the ASCP, because there was not a substantial amount of work experience, education, or training required in order to obtain the MB certification. *Id.*

According to the Employer, to be eligible for certification as an International Technologist in Molecular Biology (MB) by the ASCP, an applicant must satisfy the requirements of at least one of the following paths: (1) Baccalaureate degree or equivalent in any biological or chemical science from an accredited/approved educational institution and completion of a medical laboratory program; (2) Baccalaureate degree or equivalent in any biological or chemical science from an accredited/approved educational institution and completion of one year of experience in molecular diagnostics in an accredited/approved laboratory facility; or (3) graduate level degree ("Master's, Doctorate, or equivalent) in any biological or chemical science from an accredited/approved educational institution and completion of six months of experience in molecular diagnostics in an accredited/approved laboratory facility. (AF 25-26). The

Employer contended that it is possible to obtain MB certification by virtue of having a bachelor's degree in any biological or chemical science and one year of experience in a molecular diagnostics facility, and therefore, the MB license requirement does not result in the total amount of necessary work being on the high end of the O*Net job zone range. (AF 26). Therefore, the Employer argued that no additional points should be added due to the license requirement.

The CD affirmed the CO's determination on June 7, 2011. (AF 18-19). The CD found that Natural Sciences Managers, O*Net code 11-9121.00, was the proper occupation title, because the Employer's job duties are not "research at the scientist level," as is the case with Geneticists, O*Net code 19-1029.03. (AF 18). The CD also found that the Geneticists occupation usually requires a doctoral degree, while the Natural Sciences Managers occupation usually requires a bachelor's degree. *Id.* The CD determined that the Employer's job duties are those of a supervisory laboratory technician who is managing the non-scientist functions of the laboratory, and that the duties do not include any actual genetic research, only laboratory testing and management of materials, expenses and strategic planning, and supervision of 20 staff members. *Id.*

Additionally, the CD affirmed the determination that the job corresponds to a Wage Level 3. (AF 19). The CD explained that Job Zone 5 is assigned to the Natural Sciences Managers occupation, and the normal experience range is 48-120 months. *Id.* Therefore, the CD found that the Employer's requirement of 60 months is at the low end of the experience range, and that pursuant to the *November 2009 PWD Guidance*, an additional wage level should be added when the experience requirement is at the low end of the experience range. *Id.* Additionally, the CD determined that an additional wage level was appropriate because the Employer requires certification as an MB by ASCP, which is not required for entry into the occupation. *Id.*

On July 6, 2011, the Employer requested BALCA review of the CD's determination. (AF 1-17). The CD forwarded the administrative file to the Board on August 31, 2011, and BALCA issued a Notice of Docketing on September 12, 2011. The Employer filed its legal brief on October 6, 2011, and counsel for the CD filed its Statement of Position on October 7, 2011.

On appeal, the Employer reiterates its argument that the job opportunity was improperly classified, and alternatively, that the wrong wage level was assigned. The CD argues that “Natural Sciences Managers” is the appropriate occupational title, because the majority of the Employer’s job duties overlap with the tasks listed on O*Net for the occupation. The CD noted that most Geneticist positions require a PhD, while the Employer’s job only requires a bachelor’s degree. Additionally, the CD contends that the proper wage level was assigned per the *2009 PWD Guidance*. Specifically, the CD states that the *2009 PWD Guidance* requires an additional point when the experience requirement is on the low end of the SVP range, and an additional point because the MB (ASCP) is not required for an entry-level position in the occupation.

DISCUSSION

Standard of Review

In general, BALCA’s standard of review is de novo. *Albert Einstein Medical Center*, 2009-PER-379, slip op. at 30 (Nov. 21, 2011) (en banc). However, where there is a legally recognized reason for affording a more deferential standard of review to the agency’s decision, the Board’s review is based on an abuse of discretion standard. *Id.* The Board has held that an abuse of discretion standard applies to the Center Director’s or Administrator’s decision on an employer’s appeal of a prevailing wage determination arising under Section 655.731(d)(2). *See RP Consultants, Inc. d/b/a Net Matrix Solutions*, 2009-JSW-1 (June 30, 2010).

RP Consultants, Inc. involved an appeal of several State Workforce Agencies’ (“SWA”) PWDs during an H-1B Wage and Hour Division enforcement action. The employer requested review of the SWAs’ PWDs with the OFLC Administrator under 20 C.F.R. §§ 655.731(d)(2) and 656.41(c), and then appealed the Administrator’s determination to BALCA under Sections 655.731(d)(2) and 656.41(d). In determining the standard of review of the Administrator’s determination, BALCA found that Section 656.41(c)(2009) vested significant discretion in the OFLC Administrator, who reviewed

the PWD issued by the SWA.² Based on the finding that Section 656.41(c) vests significant discretion with the OFLC Administrator in reviewing a SWA's PWD, as well as the complexity of the PWD regulations and the special expertise required to make such determinations, BALCA found that the standard of review of the CD/Administrator's decision is for abuse of discretion. Slip op. at 10.

Although *RP Consultants, Inc.* arose under 20 C.F.R. § 655.731(d)(2), which governs an appeal of the Administrator's PWD in connection with an H-1B Wage and Hour Division enforcement action, Section 656.41(c) also governs the CD's review of a CO's H-1B and PERM PWDs. See 20 C.F.R. §§ 655.731(a)(2)(ii)(A)(1); 656.40(a). Accordingly, we find that the same discretion and authority is vested in the CD when reviewing H-1B and PERM PWDs. As such, we find that both H-1B and PERM prevailing wage determinations are reviewed under an abuse of discretion standard, and we will review the CD's decision in this case to determine whether it was consistent with the applicable regulations and is a reasonable exercise of that discretion. See *RP Consultants*, slip op. at 10.

CD's Determination Regarding the Occupational Title

The PERM regulations require an employer filing an application for permanent labor certification after January 1, 2010, to request a prevailing wage determination from the National Processing Center [or National Prevailing Wage Center] ("NPC" or "NPWC"). 20 C.F.R. § 656.40(a). The regulations provide several methods by which the prevailing wage is determined. 20 C.F.R. § 656.40(b)(1)-(4).

² Section 656.41(c)(2009) provided that "[t]he director [OFLC Administrator] will review the PWD solely on the basis upon which the PWD was made and, upon the request for review, may either affirm or modify the PWD." Similarly, Section 656.41(d)(2008) provided:

- (d) *Review on the record.* The CO reviews the SWA PWD solely on the basis upon which the PWD was made and, upon the request for review, may:
- (1) Affirm the prevailing wage determination issued by the SWA;
 - (2) Modify the prevailing wage determination; or
 - (3) Remand the matter to the SWA for further action.

The current version of the regulation uses the identical language as the 2009 regulation. As of January 1, 2010, the issuance of PWDs has become federalized, so the Center Director of the NPWC now reviews the PWD issued by a CO of the NPWC. 20 C.F.R. § 656.41(a),(c)(2011).

The applicable regulation provides:

If the job opportunity is not covered by a [collective bargaining agreement] CBA, the prevailing wage for labor certification purposes shall be the arithmetic mean, except as provided in paragraph (b)(3) of this section, of the wages of workers similarly employed in the area of intended employment. The wage component of the DOL Occupational Employment Statistics Survey shall be used to determine the arithmetic mean, unless the employer provides an acceptable survey under paragraph (g) of this section.

20 C.F.R. § 656.40(b)(2). The Employment and Training Administration (“ETA”) has issued *2009 PWD Guidance*, which outlines a step-by-step, standardized approach for determining the appropriate occupational classification under the SOC/O*Net³ and appropriate wage level for the job opportunity.⁴

In discussing how the occupational code is assigned, the *2009 PWD Guidance* provides that the O*Net description that corresponds to the employer’s job offer shall be used to identify the appropriate occupational classification. *2009 PWD Guidance* at 4. The *PWD Guidance Letter* also states that “[i]f the employer’s job opportunity has worker requirements described in a combination of O*Net occupations, the [NPWC] should default directly to the relevant O*Net-SOC occupational code for the highest paying occupation. For example, if the employer’s job offer is for an engineer-pilot, the

³ O*Net is a database containing information on hundreds of standardized and occupation-specific descriptors. O*Net job descriptions contain several standard elements, one of which is a “Job Zone.” An O*Net Job Zone “is a group of occupations that are similar in: how much education people need to do the work, how much related experience people need to do the work, and how much on-the-job training people need to do the work.” The Job Zones are split into five levels, from occupations that need little or no preparation, to occupations that need extensive preparation. Each Job Zone level specifies the applicable specific vocational preparation (“SVP”). See www.onetonline.org/help/online/zones. SVP is defined under the PERM regulations as “the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.” 20 C.F.R. § 656.3.

⁴ Although both parties have framed their positions in terms of the process outlined in the *2009 PWD Guidance Letter*, the document was not included in the Appeal File. The *Guidance Letter* is issued by ETA and is made available to the public. We find that it is appropriate to take administrative notice of the *Guidance Letter*. 29 C.F.R. §§ 18.45 and 18.201; *Albert Einstein Medical Center*, 2009-PER-379, slip op. at 9-13; Employment and Training Administration, *Prevailing Wage Determination Policy Guidance Nonagricultural Immigration Programs* (2009), www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

NPWHC shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.” *Id.*

We will review the typical duties of each of the two proposed occupation titles, as compared to the job duties that are required for the Supervisor, Clinical Genetics Laboratory position, to determine if the CO abused his discretion in assigning the “Natural Sciences Managers” occupational title to this position.

The following chart compares each job duty of the position of Supervisor, Clinical Genetics Laboratory to the duties that are normal for the occupation of “Geneticists” and the occupation of “Natural Sciences Managers.” (AF 34, 49).

Job duties for the position of Supervisor, Clinical Genetics Laboratory	Is this similar to a normal job duty of for “Geneticist,” O*Net code 19-1029.03?	Is this similar to a normal job duty for “Natural Sciences Managers,” O*Net code 11-9121.00?
Clinical laboratory testing of high complexity in a clinical environment	Yes. “Plan or conduct basic genomic and biological research related to areas such as regulation of gene expression, protein interactions, metabolic networks, and nucleic acid or protein complexes.”	No.
Assist in the review, interpretation, and reporting of complex and routine test results	Yes. “Review, approve, or interpret genetic laboratory results.” “Evaluate genetic data by performing appropriate mathematical or statistical calculations and analyses.”	No.
Help to coordinate workflow and oversee quality control activities in the laboratory.	Yes. “Supervise or direct the work of other geneticists, biologists, technicians, or biometricians working on genetics research projects.”	Yes. “Confer with scientists, engineers, regulators, and others to plan and review projects and to provide technical assistance.” “Design and coordinate successive phases of problem analysis, solution proposals, and testing.”

Assist in the development of new protocols in clinical research programs	Yes. "Supervise or direct the work of other geneticists, biologists, technicians, or biometricians working on genetics research projects."	Yes. "Plan and direct research, development, and production activities." "Determine scientific and technical goals within broad outlines provided by top management and make detailed plans to accomplish these goals."
Provide technical guidance and training to employees and students	No.	Yes. "Confer with scientists, engineers, regulations, and others to plan and review projects and to provide technical assistance." "Develop innovative technology and train staff for its implementation."
Maintain required recordkeeping and adhere to laboratory policies and procedures	Yes. "Maintain laboratory notebooks that record research methods, procedures, and results."	No.
Supervise clinical laboratory technical and support staff	Yes. "Supervise or direct the work of other geneticists, biologists, technicians, or biometricians working on genetics research projects."	Yes. "Hire, supervise and evaluate engineers, technicians, researchers, and other staff."
Conduct staff evaluations and assist in inventory control, expense management and strategic planning	No.	No.
Coordinates quality monitoring, equipment evaluation, staff orientation and education, research and safety control.	No.	Yes. "Develop and implement policies, standards and procedures for the architectural, scientific and technical work performed to ensure regulatory compliance and operations enhancement."

In light of the foregoing, it is clear that there are several overlapping job duties between the two occupational titles proffered in this case. We agree with the Employer that the Natural Sciences Managers occupation does not include clinical genetics testing as a job duty, which is a significant omission when comparing the job duties of each occupation. Nevertheless, the *2009 PWD Guidance* provides that when the employer's job opportunity has worker requirements that combine O*Net occupations, the NPWC should default directly to the occupation code for the highest paying occupation. *2009 PWD Guidance* at 4. Accordingly, under the *2009 PWD Guidance*, it is largely irrelevant that the Natural Sciences Managers occupation does not include genetic research as a job duty, as the position of "Supervisor, Clinical Genetics Laboratory" has requirements that combine the duties of "Natural Sciences Managers" and "Geneticist." Therefore, the CO is to assign the O*Net-SOC occupational code for the higher paying of the two occupations.⁵

O*Net shows that the mean wage in 2010 for Natural Sciences Managers in the Atlanta Metropolitan Statistical Area ("MSA") using the ACWIA database was \$124,467 per year, while the mean wage in 2010 for Geneticists in the Atlanta MSA using the ACWIA database was \$53,976 per year.⁶ (AF 48). Therefore, even though the Natural Sciences Manager occupation does not include clinical genetic testing as a job duty, because it is the higher paying occupation of the two, it is the appropriate SOC occupational title and code.

Based on the foregoing, we find that the CD's assignment of the occupational title "Natural Sciences Managers," O*Net code 11-9121.00, is consistent with the *2009 PWD Guidance*, and therefore, find that the CD did not abuse his discretion in assigning this SOC code.

⁵ The *2009 PWD Guidance* does not indicate whether determination of which occupation has the highest wage is based on the entry-level wage or the mean wage of each respective occupation. We find it most appropriate to make the determination using the mean wage of each occupation.

⁶ Official notice is taken of the ETA's Foreign Labor Certification Data Center, Online Wage Library. The mean wage for Geneticists was determined by entering the relevant information into the FLC Data Center website. See www.flcdatacenter.com/OesQuickResults.aspx?area=12060&code=19-1029&year=11&source=2 (last visited Jan. 3, 2012). We note that the mean wage is identical to the Level 3 Wage, which, as explained *infra*, is the appropriate wage level for this position.

CD's Determination Regarding the Wage Level

The Employer also argues that the CD's assignment of Wage Level 3 is erroneous. According to the procedure provided in the *2009 PWD Guidance*, every occupation begins at Wage level 1, which is considered an entry-level wage. *See PWD Guidance Letter* at 8. The *2009 PWD Guidance* explains that the employer's requirements for experience, education, training, and special skills are compared to those generally required for the occupation as described by O*Net, and will be used as indicators that the job opportunity is for an experienced (Level 2), qualified (Level 3) or fully competent (Level 4) worker, thereby warranting a PWD at a higher wage level. *Id.* Accordingly, when determining the wage level, a point (or level) is added based on: 1) experience, 2) education, 3) special skills and other requirements, and 4) supervisory duties. *2009 PWD Guidance* at 9-13.

1. Experience

The *PWD Guidance Letter* states that for Job Zones 2 through 5, the wage level is not increased if the experiential requirements of the position are at or below the level of experience and SVP range. *2009 PWD Guidance* at 10. The wage level is increased by one if the employer requires experience in the low end of the experience and SVP range and increased by two if the employer requires experience in the high end of experience and SVP range. *Id.* The wage level is increased by three if the employer's experience requirement is greater than the experience and SVP range. *Id.*

In this case, the occupation of Natural Sciences Managers is classified as O*Net Job Zone 5, and the SVP range for the position is 8.0 and above. (AF 52). The PERM regulations provide that an SVP level of 8 corresponds to "over 4 years up to and including 10 years" of experience. 20 C.F.R. § 656.3. The Employer in this case requires 60 months of experience in a clinical genetics molecular lab, or related lab experience, which is on the low-end of the O*Net experience and SVP range. Therefore, the initial wage level of 1 was properly increased by one, resulting in a level 2 wage.

2. Education

The *PWD Guidance Letter* provides that for professional occupations, if the education required is equal to or less than the usual education contained in Appendix D of the *PWD Guidance Letter*, no points are added for education. *Id.* Appendix D states that “work experience, plus a bachelor’s or higher degree” is normal for the occupation of Natural Sciences Managers. As the Employer’s position requires a bachelor’s degree, no additional points are added for education. *Id.*

3. Special Skills and Other Requirements

The *PWD Guidance Letter* provides that an employer’s requirement for a license or certification should be evaluated to determine if it indicates a requirement of a special skill warranting the award of a point. *2009 PWD Guidance* at 11. The *PWD Guidance Letter* provides that “if the employer’s job opportunity requires the possession of a license or certification, the [NPWC] must give careful consideration to the occupation in question and the education, training, and experience requirements of the license or certification to evaluate whether possession of a license or certification is an indicator that the offer of employment is for an experienced worker.” *2009 PWD Guidance* at 12. The *PWD Guidance Letter* further states that the CO should “[c]onsider whether the employer’s requirements indicate the need for skills beyond those of an entry-level worker.” *Id.*

The CO increased the wage level by 1 based on the Employer’s requirement of certification as a MB by ASCP. While the Employer argues that “it is possible to obtain certification by virtue of having a bachelor’s degree in any biological or chemical science and 1 year of experience in a molecular diagnostics facility,” this statement is incorrect. An individual does not receive MB certification upon completion of a bachelor’s degree and one year of experience. Rather, that is simply a condition precedent for an individual to be eligible to take the MB examination. Only after passing the examination does an individual become certified.⁷ Moreover, unlike an attorney, who must pass an examination in order to enter into the profession, the fact that a year of experience is

⁷ Official notice is taken of the requirements for MB certification by the ASCP. See www.ascp.org/certification#tabs-1 (last visited Jan. 6, 2012).

required before an applicant can take the licensing examination reveals that the MB license requires skills beyond those of an entry-level worker.

The *PWD Guidance Letter* includes an exception to the addition of a wage level for a license, which is not applicable in this case. The *PWD Guidance Letter* provides that “[i]f a substantial amount of work experience, education, or training is required to obtain a license or certification and this results in the total amount of necessary work experience being on the high end of the O*NET job zone range, ***a point could be added either in Step 2 for the work experience, or in Step 3 for the education or training, or in Step 4 for the license. A point or points should not be added in every step.***” (emphasis in original). *2009 PWD Guidance* at 12. There are three paths to becoming eligible to sit for the MB examination, and there is no indication that any of these paths result in the total amount of necessary work experience being on the high end of the O*Net job zone range.⁸ Accordingly, the exception does not apply, and we find that the CO did not abuse his discretion in determining that the MB certification is not required for entry into the job. Accordingly, we affirm the additional point added to the wage level, resulting in a Wage Level 3.

4. Supervisory Duties

Under the *2009 PWD Guidance Letter*, one point is added if the job opportunity entails supervision of workers, unless supervision is a customary duty for the O*Net occupation, *e.g.*, managerial positions. *2009 PWD Guidance* at 13. Here, the position is managerial, and therefore, it was proper that the CD did not add an additional wage level based on supervisory duties.

⁸ The ASCP provides that an applicant must satisfy the requirements of at least one of the following routes to be eligible to take the MB examination: (1) Baccalaureate degree or equivalent in any biological and chemical science from an accredited/approved educational institution and complete a medical laboratory program; (2) Baccalaureate degree or equivalent in any biological or chemical science from an accredited/approved educational institution and complete one year of experience in molecular diagnostics in an accredited/approved laboratory facility; or (3) graduate level degree (Master’s Doctorate, or equivalent) in an accredited/approved laboratory facility. See www.ascp.org/Board-of-Certification/International/Certification#tabs-1 (last visited Jan. 9, 2012).

Based on the foregoing, we affirm the CD's PWD determinations in these consolidated cases.

ORDER

IT IS ORDERED that the prevailing wage determination made by the Certifying Officer is hereby **AFFIRMED**.

Entered at the direction of the panel by:

A

Todd R. Smyth
Secretary to the Board of
Alien Labor Certification Appeals

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for review by the full Board. Such review is not favored and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, NW Suite 400
Washington, DC 20001-8002

Copies of the petition must also be served on other parties and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed five double-spaced pages. Upon the granting of a petition the Board may order briefs.