

**U.S. Department of Labor**

Board of Alien Labor Certification Appeals  
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**Issue Date: 19 August 2014**

**BALCA Case No.:** 2013-PWD-00001  
**ETA Case No.:** P-200-12139-728898

*In the Matter of:*

**ETH CARGO SERVICES,**  
*Employer.*

Center Director: William K. Rabung

Appearances: Patrick D. O'Neill  
O'Neill & Gilmore Attorneys at Law  
San Juan, Puerto Rico  
*For the Petitioner*

Gary M. Buff, Associate Solicitor  
Office of the Solicitor  
Division of Employment and Training Legal Services  
Washington, DC  
*For the Center Director*

Before: Paul R. Almanza, *Administrative Law Judge*; William S. Colwell,  
*Associate Chief Administrative Law Judge* and Stephen R. Henley,  
*Associate Chief Administrative Law Judge*

**WILLIAM S. COLWELL**  
Associate Chief Administrative Law Judge

**DECISION AND ORDER**

This matter involves an appeal of the prevailing wage determination made by the National Prevailing Wage Center ("NPWC") and affirmed by the Center Director relating to the Employer's labor condition application under H-1B nonimmigrant visa program. 8 U.S.C. §§ 1101(a)(15)(H)(i)(b), 1182(n)(1)(A)(i); 20 C.F.R. Part 655, Subpart H. For the reasons set forth below, we remand this matter to the Center Director with instructions to issue a prevailing wage determination at the level II wage for Transportation, Storage, and Distribution Managers" (SOC 11-3071).

## **BACKGROUND**

### *Statutory and Regulatory Framework*

The Immigration and Nationality Act (“INA”) establishes a skilled guest worker program—commonly referred to as the H-1B nonimmigrant program—that permits U.S. employers who meet specific regulatory criteria to hire foreign workers in a “specialty occupation” on a temporary basis. 8 U.S.C. § 1101(a)(15); 20 C.F.R. § 655.700 (2013). To hire a foreign worker under this program, the employer must agree to pay a wage that is the greater of: (1) “the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question”; or (2) “the prevailing wage level for the occupational classification in the area of employment.” 8 U.S.C. § 1182(n)(1)(A)(i). The United States Department of Labor (“DOL” or the “Department”), Employment and Training Administration (“ETA”) has promulgated regulations to implement this requirement. *See generally*, 20 C.F.R. § 655, Subpart H. The regulations provide employers with several methods to determine the “prevailing wage level for the occupational classification in the area of employment.” *See* 20 C.F.R. § 655.731(a)(2). One such method is to request a prevailing wage determination from ETA’s National Prevailing Wage Center (“NPWC”). 20 C.F.R. § 655.731(a)(2)(ii)(A).

The NPWC receives and processes prevailing wage determination requests in accordance with the regulations and guidance promulgated by the Department. 20 C.F.R. § 656.731(a)(2)(ii)(A).<sup>1</sup> If an employer’s job opportunity is not covered by a collective bargaining agreement and the employer does not provide a private wage survey, the NPWC relies on wage data collected by the Bureau of Labor Statistics (“BLS”) in the Occupational Employment Statistics (“OES”) survey to determine “the prevailing wage level for the occupational classification in the area of employment.” 20 C.F.R. § 656.731(a)(2)(ii)(A). OES wage data is classified by Standard Occupational Classification (“SOC”) codes; the data for each SOC code is divided into four levels commensurate with experience, education, and the level of supervision, as required by the H-1B Visa Reform Act. 8 U.S.C. § 1182(p)(4).

In 2009, ETA issued guidance (“*2009 PWD Guidance*”) outlining a step-by-step approach for the NPWC to determine the prevailing wage rate for a position using wage data collected by BLS in the OES survey. Employment and Training Administration, *Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs, available at* [www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). First, the NPWC must determine the appropriate occupational classification for the position, *i.e.*, SOC code, by comparing the employer’s description of the position with the occupational descriptions in the Occupational Information Network (“O\*NET”).<sup>2</sup> *Id.* at 4. Then, the NPWC must

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<sup>1</sup> The regulations direct the NPWC to “follow 20 CFR 656.40 and other administrative guidelines or regulations issued by [the Employment and Training Administration].” 20 C.F.R. § 656.731(a)(2)(ii)(A).

<sup>2</sup> 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

compare the employer's requirements for experience, education, training, and special skills with the tasks, knowledge, skills, and specific vocational preparation (education training, and experience) generally required for acceptable performance in the occupation, as specified in O\*NET, to determine the appropriate wage level for the position. *Id.* at 7-8. Every position begins at an entry-level wage (Wage Level I) and progress to a wage commensurate with that of a qualified worker (Wage Level II), experienced worker (Wage Level III), or fully competent worker (Wage Level IV), depending on the experience, education, and special skills that the Employer requires. *Id.* at 3, 8.

### *Procedural History*

On May 18, 2012, ETH Cargo Services ("Employer") filed an *Application for Prevailing Wage Determination* (ETA Form 9141) with the NPWC for a "Logistics Manager" position in Puerto Rico. Administrative File ("AF") 112, 247-58. The Employer intends to use the prevailing wage determination in support of a Labor Certification Application for an H-1B visa. AF 247. As reported in the employer's ETA Form 9141, the Logistics Manager position requires a bachelor's degree in Finance or Business Administration and the following "special requirements":

Ability to use Microsoft Office including PowerPoint to prepare customer presentations; ability to use Excel to prepare Requests for Quotations (RFQs) and Requests for Proposals (RFPs) for bids and write programs in Excel per needs of customers'; fluency in English Spanish and German; eligibility for security clearances for Transportation Security Administration (TSA), hazardous materials (HAZ MAT) and Dangerous Good Regulations (DGR) certifications; and availability to travel occasionally for overseas client business meetings and to oversee ongoing and prospective projects.

AF 249, 252. The position does not require any previous employment experience. AF 249.

The NPWC issued a determination on July 2, 2012, assigning the Logistics Manager position a prevailing wage of \$87,818.00 per year based on the level IV wage for "Transportation, Storage, and Distribution Managers" (SOC 11-3071) in Puerto Rico. AF 250. The Employer filed a request for redetermination on August 2, 2012, arguing that the NPWC had erred in assigning a level IV wage to a position that requires no previous employment experience. AF 245-246. According to the Employer, the NPWC should have assigned a level II wage because the Logistics Manager position only requires one special skill—fluency in German—that should lead to an increase in the wage assignment. In support of its argument, the Employer provided a worksheet comparing its position to the job requirements, knowledge, and

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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](http://www.onetonline.org/help/online/zones).

skills listed in O\*NET for Logistics Managers (SOC 11-3071.03) and Transportation Managers (SOC 11-3071.01). AF 163-169.<sup>3</sup>

The NPWC issued a decision upholding its initial prevailing wage determination on September 17, 2012. AF 242-243. As explained in this decision, the NPWC assigned a level IV wage because:

The employer requires occasional travel “for overseas business client meetings.” International travel is a condition of employment that is not normal to the occupation generally. A U.S. worker would expect to be paid more for the position because of these additional requirements. A wage level was assigned for this requirement.

Also, the employer requires “hazardous materials (HAZ MAT) and Dangerous Good Regulations (DGR) certifications.” These certification requirements are not normal to the occupation. An additional wage level was added for this requirement.

The employer requires eligibility “for security clearances for Transportation Security Administration (TSA).” This requirement is not normal to the occupation. An additional wage level was added for this requirement.

Additionally, the employer requires fluency in two foreign languages, Spanish and German. These language requirements are not normal to the occupation generally and a U.S. worker would be expected to be paid more for these language requirements. An additional wage level was added for each foreign language requirement. (One additional level was added for German, and one additional level was added for Spanish.) Therefore, the maximum wage level of IV was assigned.

AF 242-43.

On October 17, 2012, the Employer requested review by the Center Director. AF 109-241. The Employer argued that its request for redetermination had not been properly reviewed and that the NPWC had arbitrarily assigned a level IV wage to a position that does not require any previous employment experience. AF 113. The Employer acknowledged that its requirement for German fluency “understandably would increase the wage expectation of any applicant,” and asked the Center Director to assign a level II wage. The Employer questioned whether the NPWC had reviewed the documentation it submitted on redetermination and argued that the wage reaffirmation decision “incorrectly inflates the wage for certain items contained in the job description that the [NPWC] considers not ‘normal to the occupation’ . . . despite [the Employer’s] detailed analysis of the job duties, its requirements using the [NPWC]’s own OES worksheet and the comparison directly with the O\*NET job description.” AF 115.

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<sup>3</sup> We cite the worksheet that the Employer submitted with its request for Center Director Review because the Appeal File provided by the NPWC does not contain the original worksheet.

In its request for review, the Employer addressed each of the requirements that the NPWC relied upon to justify the assignment of a level IV wage. AF 115-122. The Employer objected to the addition of a wage level for its international travel requirement because international travel would be “a very small percentage of the duties, no more than 5%.” AF 115-116. The Employer argued that the NPWC had erred in determining that travel was not normal to the occupation because:

[T]he O\*NET description of Work Context lists “Face-to-Face Discussions” as a core duty 97% of the time for Logistics Managers and 98% of the time for Transportation Managers. This is the majority of the type of communication that is normally conducted. In the context of the employer’s business which involves international contracts, this occasionally means negotiating for new contracts overseas in order to conduct face-to-face discussions. Thus, it is not out of the norm to include such a requirement, not should it increase the wage. Again, in the context of the petitioner, a freight forwarded employing 11, this would be a very small percentage of the duties, no more than 5%.

...

Any travel that most frequently occurs is simply to go to the worksite locally where a project is being unloaded to oversee and ensure that the materials are handled correctly. As an example of the type of “travel” required of the Logistics Manager is a project that was recently completed for the logistical import and travel route for Windmill parts that were transported and installed in Naguabo, Puerto Rico’s Windmill project. The Logistics Manager traveled from the office in Carolina to Naguabo on a daily basis for the duration of the project. The distance between Carolina and Naguabo is 33 miles one way, constituting a 66 mile round trip. This project has already been completed. Other than short distances like this in light of the fact that Puerto Rico is a small island, travel distances are not considerable, at least not by U.S. standards.

AF 116. The Employer also objected to the addition of two wage levels for its requirement that candidates be “eligible” for a Transportation Security Administration (TSA) security clearance and hazardous materials (HAZ MAT) and Dangerous Good Regulations (DGR) certifications. AF 117-122. According to the Employer, the NPWC mistakenly concluded that the position “requires” these certifications because applicants need not possess the certifications to be considered for or qualify for the position. AF 117. Specifically, the Employer explained:

Being eligible for a security clearance relates to various factors which also include whether or not the candidate has a criminal record, a factor that may render that candidate ineligible under various grounds. To ensure that no candidate is discouraged from applying for the position, no undue emphasis was placed upon this requirement and it was not certainly meant to stand out as a means of disqualification.

Because of the security concerns of the government agencies regulating freight forwarding activities, the company must meet the requirements for the various certifications that it possesses to continue to be able to legally receive and ship

dangerous goods, hazardous materials and any other items according to the law. The employer is not requiring that the applicant have any experience or knowledge in these areas, merely that they be willing to learn and that most importantly, they can pass the security background checks to eventually qualify for the certifications.

AF 118. The Employer asserted that the NPWC had erred in concluding that the security clearance and certifications were not normal to the occupation and provided a detailed chart outlining relevant selections of the O\*NET job description for Logistics Managers (SOC 11-3071.03) to support its claim. Finally, the Employer objected to the addition of a wage level for its requirement that candidates be fluent in Spanish, because its Logistics Manager position is located in Puerto Rico, where Spanish is an official language and business is primarily conducted in Spanish. AF 123.

The Center Director issued a decision affirming the prevailing wage determination on December 14, 2012. AF 98-102. In finding that the Logistics Manager position was appropriately assigned a level IV wage, the Center Director relied on the “special requirements” cited in the September 17, 2012 decision denying redetermination. Specifically, the Center Director stated:

The Employer requires international travel. Specifically, Item D.a.7a of the employer’s ETA Form 9141 states, “[t]ravel may occasionally be required for overseas business client meetings and to oversee ongoing and prospective projects.” The employer argues this occasional international travel is infrequent. Additionally, the employer’s business involves international contracts, which requires the position to attend meetings or negotiations overseas and to oversee projects. Also, the employer indicates under Work Context of the O\*NET description for SOC 11-3071.03 – Logistics Managers includes “Face-to-Face Discussions”, which supports travel for negotiations is the norm. However there is no indication in O\*NET and OES that international travel is normal to the occupation. While international travel may be normal for the employer’s position, it is not normal to the occupation as a whole. Therefore, international travel is not normal to the occupation. An extra wage level was added for this international travel requirement.

The employer requires “eligibility for security clearances for Transportation Security Administration (TSA), hazardous materials (HAZ MAT) and Dangerous Good Regulations (DGR) certifications.” The employer argues no additional wage level should be added as an actual security clearance or certifications are not required. . . . However, the employer’s requirement for a candidate to have “eligibility” is the same as those candidates who have the security clearance or certifications. By having “eligibility”, the employer is requesting the requirements, specific skills, and knowledge of those who have the license and certifications. These requirements, specific skills, and knowledge are not normal for entry to the occupation, SOC 11-3071.03 – Logistics Managers. It is of note, while these requirements are specific to the employer’s position, the requirements

are not normal to the occupation. As such, the security clearance and certifications are not figured into the OES wages and a U.S. worker would expect to be paid more for such requirements. However, after review, the security clearance and HAZ MAT certification were assigned one additional wage level. Another wage level was assigned for the employer's DGR certification requirement.

Item D.b.5 also indicates that fluency in Spanish and German language is required. The employer argues these language requirements should not increase the wage level of the position. Specifically, the employer states that Spanish should not be an unusual requirement as the work location is in Puerto Rico, where "Spanish is the official language." Additionally the employer argues that German fluency is required to communicate with German clients.

While the employer argues, the foreign language requirements are not unusual within the context of its job and the industry, the employer's requirements of Spanish and German are not normal to the occupation. In accordance with the National Prevailing Wage Policy Guidance issued in November 2009, a language requirement other than English is generally considered a special skill:

A language requirement other than English in an employer's job offer shall generally be considered a special skill for all occupations, with the exception of Foreign Language Teachers and Instructors, Interpreters, and Caption Writers, and a point should be entered on the worksheet.

Although Spanish is widely used in Puerto Rico, Spanish is not a normal requirement of the occupation. Also, the employer's German language requirement is not normally required for the occupation of 11-3071.03 – Logistics Managers. As such, one wage level for each language, generating a total of two wage levels, were added for the Spanish and German language requirements.

In summary, the employer's wage level is greater than IV. All employer applications for a prevailing wage determination shall initially be considered an entry level or Level I wage. In the instant case, an additional wage level was added for international travel. Another wage level was added for the employer's eligibility of a security license and HAZ MAT certification. Also, another wage level was added for the employer's DGR certification. Two more wage levels were added for the employer's Spanish and German fluency requirements. As such, at six points, the maximum wage level IV was appropriately assigned.

AF 99-101. According to the Center Director, a U.S. worker who met these "special requirements" would expect to be paid more.

The Employer requested review of the Center Director's decision on January 11, 2013. AF 1. BALCA issued a Notice of Docketing and Order Setting Briefing Schedule on February 27, 2013. The Employer submitted a legal brief on March 27, 2013; Counsel for the Center

Director declined to submit additional legal argument. BALCA received a complete Appeal File on May 3, 2013.

## **JURISDICTION AND STANDARD OF REVIEW**

This Board has jurisdiction under 20 C.F.R. § 655.731(a)(2)(ii)(A)(1). We review the prevailing wage determination for an abuse of discretion. *See Emory University*, 2011-PWD-00001/2, slip op. at 6-7 (Feb. 27, 2012); *RP Consultants, Inc. d/b/a Net Matrix Solutions*, 2009-JSW-00001 (June 30, 2010). We will affirm the determination if it is consistent with the INA and its implementing regulations and represents a reasonable exercise of the discretion afforded to the NPWC under the Department’s guidance and regulations. *See RP Consultants*, slip op. at 10.

## **DISCUSSION**

The *2009 PWD Guidance* outlines a step-by-step process to determine the appropriate wage level, but cautions the NPWC not to implement this process “in an automated fashion.” *See 2009 Guidance* at 8-13. It instructs the NPWC to “exercise judgment when making prevailing wage determinations.” *2009 PWD Guidance* at 13. “The wage level should be commensurate with the complexity of tasks, independent judgment required, and amount of close supervision received as described in the employer’s job opportunity.” *Id.* at 13.

In his decision affirming the prevailing wage determination, the Center Director did not address the complexity of tasks, independent judgment, or amount of close supervision required of the Logistics Manager position. Indeed, it does not appear that the Center Director ever considered whether it was appropriate to assign a level IV wage—the highest possible wage level for the occupation—to a position that requires *no* previous employment experience. The *2009 PWD Guidance* defines a level IV wage as:

[W]age rates . . . assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment’s procedures and expectations. They generally have management and/or supervisory responsibilities.

*Id.* at 7. The Center Director did not explain why he believed the Logistics Manager position falls within this definition. Instead, the Center Director mechanically added a wage level for every “special requirement” that he deemed “not normal to the occupation.” In so doing, the Center Director mistakenly assumed that any requirement not normal to an occupation necessitates the assignment of an additional wage level. The *2009 PWD Guidance* specifically instructs:

**The requirement of a specific skill not listed in the O\*NET does not necessitate that a point be added.** If the specific skills required for the job are generally encompassed by the O\*NET description for the position, no point should be added. However, if it is determined that the requirements are indicators of skills that are beyond those of an entry level worker, consider whether a point should be entered on the worksheet in the Wage Level Column.

*2009 PWD Guidance* at 12 (emphasis added). As discussed below, five of the six “special requirements” upon which the Center Director relied to increase the skill level assigned to the Logistics Manager position—international travel, eligibility for a security license and HAZ MAT certification, eligibility for a DGR certification, and Spanish fluency—are not obvious indicators of skills beyond those of an entry level worker.

The Center Director affirmed the addition of a wage level based on the Employer’s “international travel” requirement after finding “no indication in O\*NET that international travel is normal to the occupation.” AF 100. In so finding, the Center Director did not respond to the Employer’s argument that that travel is not abnormal to the occupation generally.<sup>4</sup> Nor did he respond to the Employer’s argument that any international travel required of the Logistics Manager would be incidental and infrequent. International travel is not obviously indicative of a skill beyond that of an entry level worker. Accordingly, the addition of a wage level for this requirement, without any additional explanation, constitutes an abuse of discretion.

The Center Director added two wage levels based on his finding that it was “not normal to the occupation generally” to require a TSA security clearance or HAZ MAT and DGR certifications. AF 100. In so finding, the Center Director did not address the core duties from the O\*NET job description for Logistics Managers and Transpiration Managers that the Employer cited in support its claim that the security clearance and certifications are normal to the occupation. But regardless of whether the clearance or certifications are “normal to the occupation generally,” it was an abuse of discretion for the Center Director to add two wage levels without evaluating whether the clearance or certifications are indicative of a requirement for special skills warranting the award of an additional wage level. *See 2009 PWD Guidance* at 11. The *2009 PWD Guidance* instructs that:

An employer’s requirement for an occupational license and/or certification should be evaluated to determine if they are indicators of a requirement for special skills warranting the award of a point or points on the worksheet. They may not necessarily be such an indicator.

...

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

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<sup>4</sup> The Employer argued that because O\*NET lists “face-to-face” discussions as a core duty for Logistics Managers 97% of the time, it is normal to require a Logistics Manager to travel to the person with whom he or she must have a “face-to-face” discussion.

certification to evaluate whether possession of a license or certification is an indicator that the offer of employment is for an experienced worker.

An employer's requirement for the possession of an occupational license or certification does not constitute a situation where a point must automatically be awarded. The [NPWC] should look at the employer's job description and stated requirements to evaluate, along with other factors, whether the position is closely supervised, involves only moderately complex duties, and allows limited exercise of independent judgment. If the license or certification is a normal requirement to perform the job duties as an entry level worker, no point should be added on the worksheet in the Wage Column, e.g., attorney, teacher, registered nurse.

Some occupations have more than one license and the requirements of the license provide an indicator of the level of independent judgment and complexity of tasks required of the licensee, e.g., Journeyman Plumber or Master Plumber. The [NPWC] must consider the education, training, and experience requirements of the license or certification to determine when points should be entered on the worksheet in the Wage Column.

*2009 PWD Guidance* at 11-12. The Center Director's decision does not contain any such analysis. Nor does it provide a meaningful response to the Employer's contention that candidates only need to be "eligible" for the security clearance and certifications to qualify for the job opportunity. The Center Director concluded that "[b]y having 'eligibility', the employer is requesting the requirements, specific skills, and knowledge of those who have the license and certifications." But the record does not support this finding. The Employer specifically informed the Center Director that applicants need not possess any additional knowledge or experience, only the ability to pass a background check (*i.e.*, no criminal record) and a willingness to learn the information necessary to obtain the certifications. *See* AF 118. Because applicants do not need to have the knowledge or experience required to obtain the certifications at the time of recruitment, the Center Director erred in relying on the "eligibility" requirements to assign two additional wage levels.

The Center Director added a wage level for the Employer's Spanish language requirement after finding that "Spanish is not a normal requirement of the occupation." In so finding, the Center Director overlooked the fact that O\*NET's job description for Logistics Managers includes "knowledge of the structure and content of a foreign (non-English) language." AF 264. To defend his addition of a wage level for the Spanish language requirement, the Center Director cited the following passage from the *2009 PWD Guidance*:

A language requirement other than English in an employer's job offer shall generally be considered a special skill for all occupations, with the exception of Foreign Language Teachers and Instructors, Interpreters, and Caption Writers, and a point should be entered on the worksheet.

AF 100, citing *2009 PWD Guidance* at 12. We note that the Center Director omitted the exception that immediately follows this statement, which states:

It is recognized, however, that there may be circumstances where a foreign language is required for the job, but that requirement does not sufficiently increase the seniority and complexity of the position such that a point must be added for the foreign language requirement (e.g. Specialty Cooks).

*See 2009 PWD Guidance* at 12. The Logistics Manager position appears to fall within this exception; it is located in Puerto Rico, where Spanish is considered an official language and business is primarily conducted in Spanish. If most people speak Spanish and business is primarily conducted in Spanish, Spanish fluency is to be expected and a requirement that employees speak Spanish should not increase the seniority or complexity of the position. The Center Director's refusal to consider this fact before adding a wage level constitutes an abuse of discretion.<sup>5</sup>

The Center Director's reliance on the above "special requirements" to affirm a level IV wage assignment does not represent a reasonable exercise of the discretion afforded to him under the Department's guidance and regulations. The Center Director's decision is devoid of any logical or independent analysis, and ignores several explicit instructions in the *2009 PWD Guidance*. Where, as here, the Employer challenges the basis of the NPWC's determination, the Center Director may not dismiss the Employer's objections without providing a reasoned explanation for doing so.

After reviewing the record, we agree with the Employer that the Logistics Manager position should be classified at a level II wage rate. The *2009 PWD Guidance* defines a level II wage as:

[W]age rates . . . assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O\*NET Job Zones.

The Center Director agreed that the job duties of the Employer's position were consistent with the tasks defined in O\*NET for Logistics Managers (SOC 11-3071.03). AF 99. O\*NET classifies Logistics Managers in "Job Zone Four: Considerable Preparation Needed." AF 273. Most occupations in job zone four require a four-year bachelor's degree and a considerable amount of work-related skill, knowledge, or experience. AF 274. According to O\*NET, "[e]mployees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training." AF 274. The Employer's Logistics Manager position, which requires a bachelor's degree and no employment experience, falls in the low end of experience generally required for the occupation.

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<sup>5</sup> The Employer does not contest the Center Director's assignment of an additional wage level for the German language requirement. Accordingly, we need not address this issue.

## **ORDER**

In light of the foregoing, we hereby **REMAND** this prevailing wage determination to the NPWC with instructions to assign a wage rate consistent with the level II wage rate for Transportation, Storage, and Distribution Managers (SOC 11-3071) in Puerto Rico.

**SO ORDERED.**

For the Panel:

**WILLIAM S. COLWELL**

Associate Chief Administrative Law Judge

**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 en banc review by the Board. Such review is not favored and ordinarily will not be granted except (1) when en banc 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 en banc 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.