



Issue Date: 16 July 2014

BALCA Case No.: 2014-PWD-00005
ETA Case No.: P-100-13214-091633

In the Matter of:

MELTWATER NEWS US1, INC.,
Employer.

Center Director: William K. Rabung
National Prevailing Wage Center

Appearances: James A. Bach, Esquire
Law Offices of James A. Bach
San Francisco, California
For the Employer

Before: **Bergstrom, Johnson, and Krantz**
Administrative Law Judges

DECISION AND ORDER
REMANDING FOR FURTHER PROCEEDING ON
PREVAILING WAGE DETERMINATION

This matter arises from a request for review of a prevailing wage determination made by the Office of Foreign Labor Certification pursuant to 20 C.F.R. § 656.41(d).

FACTUAL BACKGROUND

Initial Prevailing Wage Determination

On August 5, 2013, Meltwater News US1, Inc. (“the Employer”) submitted a prevailing wage determination (PWD) request to the Office of Foreign Labor Certification’s National Prevailing Wage Center. (AF 103). The request was made in connection with the Employer’s application for permanent alien labor certification filed with the Office of Foreign Labor Certification (OFLC) for the position of “Scrum Master.” (AF 97, 99).¹

¹ In this decision, “AF” is an abbreviation for “Appeal File.”

In its PWD request, the Employer suggested the Standard Occupational Classification (SOC) code for the Scrum Master position should be 13-1111, corresponding to the SOC occupation title “Management Analysts.” (AF 99). The Employer indicated the position did not involve supervision of other employees. (AF 99). The Employer provided the following summary of the job duties for the position:

Analyze, develop, and implement Scrum, a framework used to coordinate software development tasks. The Scrum Master, defined in Wikipedia at [http://en.wikipedia.org/wiki/Scrum_\(software_development\)](http://en.wikipedia.org/wiki/Scrum_(software_development)), confers with the software development team and project leader to enable successful functioning of the Scrum system and procedures, but does not supervise any of the team members. Facilitate project planning and communication among team members through daily meetings, reviews, retrospectives, sprint and release planning, demos and other Scrum-related meetings. Analyze and monitor team performance, identify problems, and suggest improvements to the Scrum system. Train workers in the use of the Scrum procedures. Develop and update project plans for the roll-out of product releases. Maintain, monitor, and update internal project tracking systems (JIRA and GreenHopper). Participate in the organization and planning of the development schedule based on identifiable critical path, task dependencies, and major milestones. Manage project plans and schedules, ensuring successful completion within scope, budget, time, and quality parameters. Adapt project plans, schedules, and resources assignments as required throughout pilot projects to respond to emerging requirements and risks. Create reports for upper management, and coordinate strategic product direction with company executives and product managers.

(AF 102). The Employer indicated the Scrum Master position required a Master’s degree in Business Administration, Computer Science, Logistics, Operations Research, or Industrial Engineering, plus 3 years of experience in software development, sales, project management, and/or support. (AF 100, 102). Alternatively, the Employer would accept a Bachelor’s degree in Business Administration (or any major involving the study of Business Administration), Computer Science (or any field involving the study of software development), or Industrial Engineering, plus 5 years of post-degree progressive experience in software development, sales, project management, and/or support. (AF 102). Along with these primary job requirements, the Employer indicated the position also required a background that included academic coursework or at least one year of experience in business process or project management. (AF 102).

The OFLC issued a PWD for the Scrum Master position on September 18, 2013. The OFLC assigned the position the SOC occupation code 11-2021, corresponding to the occupation title “Computer and Information Systems Managers.” The OFLC further determined that the OES (Occupational Employment Statistics) wage level for the position was level III. Based on these determinations, the prevailing wage was determined to be \$133,037.00 per year. (AF 101).

Redetermination of Prevailing Wage

On September 19, 2013, the Employer submitted a request for redetermination of the PWD, asserting that a Scrum Master is not a project leader and does not occupy a managerial position, but rather helps coordinate the development environment and occupies a logistics/facilitator position. (AF 85). The Employer apparently submitted a printout of the previously referenced Wikipedia article on “Scrum,” which Wikipedia defines as “an iterative and incremental agile software development framework for managing software projects and product or application development.” (AF 86-96, “Scrum (software development),” [http://en.wikipedia.org/wiki/Scrum_\(software_development\)](http://en.wikipedia.org/wiki/Scrum_(software_development))), printed June 24, 2013). According to the Wikipedia printout, a Scrum Master works with a software or project development team, but his job differs from that of a team leader or project manager. (AF 87). His role is to facilitate the Scrum process by removing impediments to the team’s ability to achieve its goals; protecting the team from distractions; keeping the team focused; enforcing rules; and ensuring the Scrum process is used as intended. (AF 87).

On January 13, 2014, the OFLC transmitted a letter affirming its initial wage determination. The letter stated that the job duties of a Scrum Master, as set forth by the Employer, aligned more closely with those of the assigned SOC occupation title “Computer and Information Systems Manager,” SOC 11-3021 (hereinafter “CI Systems Manager”), than those of the Employer’s suggested SOC occupation title “Management Analyst,” SOC 13-1111. The letter stated that a CI Systems Manager would be expected to “Plan, direct, or coordinate computer programming; and Review project plans to plan and coordinate project activity.” OFLC determined these job duties were compatible with the Scrum Master’s job duties, because the Scrum Master’s duties were “focused on coordinating and planning IT projects.” (AF 84).

Review by the Center Director

On January 22, 2014, the Employer submitted a request for the Director of OFLC’s National Prevailing Wage Center to review the PWD. (AF 55-83). The Employer reiterated its view that the O*NET classification that best described the position of Scrum Master was Management Analyst. (AF 56). The Employer argued that the Scrum Master’s job duties matched 7 of the job duties listed on O*NET for Management Analysts. (AF 56, 79). Alternatively, the Employer asserted that the Scrum Master position might be categorized as an “Information Technology Project Manager,” SOC 15-1099.9 (hereinafter “IT Project Manager”), even though a Scrum Master technically is not a project manager. (AF 56, 81). The Employer contended that a Scrum Master clearly is not a CI Systems Manager. (AF 57). Managers falling under that category hold recruiting, hiring, firing, and supervision responsibilities; are responsible for developing IT systems at a high managerial level; and need to be able to understand and drive the technology. (AF 57, 83). The Employer contended that a Scrum Master does not hold such responsibilities and generally does not possess the technical knowledge to perform the duties of a CI Systems Manager. (AF 57).

On March 24, 2014, the Center Director rejected the Employer’s arguments and affirmed the PWD. The Center Director indicated he agreed with the initial determination that the job

duties of a Scrum Master were more consistent with those of a CI Systems Manager than those of a Management Analyst. (AF 52-54).

Appeal to the Board of Alien Labor Certification Appeals

On April 8, 2014, the Employer appealed the Center Director's decision to the Board of Alien Labor Certification Appeals ("BALCA" or "the Board") pursuant to 20 C.F.R. § 656.41. (AF 1-51). The Employer reiterated its earlier argument that a Scrum Master does not hold a managerial position, contending that the Scrum Master does not command a managerial salary and is at least one and often two levels below the CI Systems Manager in the organizational hierarchy. (AF 1). The Employer further contended that the Scrum Master is a business process facilitator rather than an engineer, and does not design, develop, or apply engineering or mathematical principles; he lacks knowledge of the technical underpinnings of the project he is working on, and lacks the authority or discretion to determine the direction of the project. (AF 2). By contrast, the sample job titles listed by O*NET for the CI Systems Manager category indicate a CI Systems Manager is generally a senior engineer who has been charged with managing other engineers. (AF 2). Employer further notes that the job titles "Project Leader" and "Project Manager" are not included in the CI Systems Manager category. (AF 2).

With regard to the alleged overlap between the duties of a Scrum Master and a CI Systems Manager, the Employer stated that 7 of duties of a CI Systems Manager listed on O*NET consist of engineering and middle management tasks that go beyond the administrative/facilitative role of the Scrum Master. (AF 2-4). The Employer contended that the 3 remaining listed duties only superficially overlap those of a Scrum Master. (AF 4). By contrast, the Employer asserted that upon close inspection, all 10 of the duties listed on O*NET for Management Analysts are applicable to Scrum Masters, and the listed duties encompass all of the duties of a Scrum Master. (AF 4-5).

Finally, the Employer also reiterated its argument that a Scrum Master's position is more closely analogous to the O*NET category of IT Project Manager than to the CI Systems Manager category. The Employer contended that O*NET's distinction between CI Systems Managers and IT Project Managers recognizes there is a key difference between the person responsible for high level management of technology programs and the person who provides leadership and coordination at the project level. (AF 5-6).

By memorandum dated May 5, 2014, the Center Director forwarded the Appeal File to the Board, reiterating his argument that a Scrum Master is properly categorized as a CI Systems Manager. The Center Director stated that the Scrum Master's job duties, as written by the Employer, went well beyond the scope of a Management Analyst's duties of coordinating organizational studies and improving efficiencies; rather, the Scrum Master's job duties were focused on managing and coordinating IT software development projects. The Center Director further asserted that because the O*NET category of IT Project Manager is classified as a new and emerging occupation, it has not yet been incorporated by the SOC Board as an official occupation and OES wage data has not been collected for it.

DISCUSSION

This proceeding arises out of the Employer's underlying request for permanent labor (PERM) certification. Under Section 212(a)(5)(A) of the Immigration and Nationality Act, an employer may not obtain PERM certification for a foreign worker unless the Department of Labor certifies that the hiring of the work will not adversely affect the wages and working conditions of U.S. workers comparably employed. *See* 8 U.S.C. § 1182(a)(5)(A). To comply with this statute, the Department of Labor requires that the wage offered to the foreign worker must equal or exceed the prevailing wage for the position. 20 C.F.R. § 656.10(c)(1). Accordingly, federal regulations require an employer filing for PERM certification to obtain a prevailing wage determination (PWD) from the Office of Foreign Labor Certification's National Prevailing Wage Center. 20 C.F.R. § 656.40(a).

The PERM regulations explain how prevailing wage is determined. For job opportunities not covered by a collective bargaining agreement, "the prevailing wage for certification purposes shall be the arithmetic mean ... of the wages of workers similarly employed in the area of intended employment." 20 C.F.R. § 656.40(b)(2). To determine this arithmetic mean, the Department of Labor's Occupational Employment Statistics (OES) Survey is applied.² *Id.* The OES Survey provides wage data for jobs based on geographic location and type of occupation. Occupations are categorized by Standard Occupational Classification (SOC) codes, which are set forth in the Department of Labor's online database of occupational information, O*NET. Therefore, to find the prevailing wage for a particular position, the O*NET/SOC code for the position must first be determined, then the corresponding wage information for the appropriate code must be located in the OES Survey. In this case, the Employer argues that the Center Director of the National Prevailing Wage Center applied an inappropriate O*NET/SOC code.

Standard of Review

The Board applies an abuse of discretion standard to the Center Director's decision on prevailing wage determinations. *Gen. Anesthesia Specialists Partnership Med. Group (GASP)*, 2013-PWD-00005, slip op. at 6 (Jan. 28, 2014); *Emory University*, 2011-PWD-00001 & -00002, slip op. at 6-7 (Feb. 27, 2012) (adopting *RP Consultants, Inc. d/b/a Net Matrix Solutions*, 2009-JSW-00001 (June 30, 2010) for PERM prevailing wage cases). Accordingly, we will uphold the Center Director's prevailing wage determination in this case unless it is inconsistent with the applicable regulations or does not constitute a reasonable exercise of his discretion.

*Standard for Determining Applicable O*NET/SOC Code*

The Department of Labor has issued a PWD guidance document detailing the standardized, step-by-step process for determining prevailing wage. EMPLOYMENT & TRAINING ADMIN., *Prevailing Wage Determination Policy Guidance: Nonagricultural Immigration Programs* (revised Nov. 2009). The guidance document explains that a job's O*NET/SOC code is identified by selecting the O*NET job description that best corresponds to the employer's job

² Data for the OES Survey is collected by the Bureau of Labor Statistics, an arm of the Department of Labor. As an alternative to using OES Survey data, the employer may submit its own valid survey or other wage data for consideration. 20 C.F.R. § 656.40(b)(3), (g). The Employer has not submitted such evidence in this case.

offer. *Id.* at 4; *Gen. Anesthesia Specialists Partnership Med. Group (GASP)*, 2013-PWD-00005, slip op. at 6 (Jan. 28, 2014). The guidance document further provides: “If the employer’s job opportunity has worker requirements described in a combination of O*NET occupations, the NPWHC [National Prevailing Wage and Helpdesk Center] 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 NPWHC shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.” *Prevailing Wage Determination Policy Guidance* at 4.

In the past, when disputes have arisen over which O*NET/SOC code applies, the Board of Alien Labor Certification Appeals has considered the job duties O*NET lists for each code and compared them to the job duties the Employer listed on its prevailing wage form. *See, e.g., Gen. Anesthesia Specialists Partnership Med. Group (GASP)*, 2013-PWD-00005 (Jan. 28, 2014); *Emory University*, 2011-PWD-00001 & -00002 (Feb. 27, 2012).

Analysis of the Facts

In this case, the Employer submitted a PWD request for the position of “Scrum Master,” a relatively new type of job within the software development industry that has not been described on O*NET or assigned a SOC code or title. The Employer contends the Scrum Master position is analogous to that of a Management Analyst (SOC 13-1111). Alternatively, the Employer asserts that although the Scrum Master’s role is distinct from that of a project manager, the position is similar to that of an Information Technology Project Manager (SOC 15-1199.09). The Center Director, however, classified the Scrum Master position as a Computer and Information Systems Manager (SOC 11-3021). We now must determine whether the job of a Scrum Master is most consistent with the job of a Management Analyst, IT Project Manager, or CI Systems Manager.

A. The Scrum Master’s role, as described by the Employer, is that of a business process implementer and project facilitator.

On the prevailing wage request form, the Employer described the Scrum Master position as involving the following job duties:

1. Analyze, develop, and implement Scrum, a framework used to coordinate software development tasks.
2. Confer with the software development team and project leader to enable successful functioning of the Scrum system and procedures.
3. Facilitate project planning and communication among team members through daily meetings, reviews, retrospectives, sprint and release planning, demos, and other Scrum-related meetings.
4. Analyze and monitor team performance, identify problems, and suggest improvements to the Scrum system.
5. Train workers in the use of the Scrum procedures.
6. Develop and update project plans for the roll-out of product releases.
7. Maintain, monitor, and update internal project tracking systems.

8. Participate in the organization and planning of the development schedule based on identifiable critical path, task dependencies, and major milestones.
9. Manage project plans and schedules, ensuring successful completion within scope, budget, time, and quality parameters.
10. Adapt project plans, schedules, and resource assignments as required throughout pilot projects to respond to emerging requirements and risks.
11. Create reports for upper management, and coordinate strategic product direction with company executives and project managers.

(AF 102). The Employer also noted that the Scrum Master position does not involve supervising other employees. (AF 99, 102).

The first five job duties listed by the Employer show that the Employer expects the Scrum Master to facilitate software development projects by implementing the “scrum” business process and ensuring the development team is able to use it properly. The next five job duties show it is the Employer’s intent that the Scrum Master will help create project plans, track the development team’s progress, and organize and manage the team’s plans and schedules to ensure successful completion of the project. The Scrum Master also must report to upper management and coordinate strategic product direction with management (job duty #11). Thus, the Scrum Master’s role, as described by the Employer, is to facilitate software development projects by serving as a coordinator and business process implementer.

The Employer has further submitted evidence describing the “scrum” system and the Scrum Master’s role within the system. (AF 86-96). In the software development context, “scrum” refers to a strategy for managing projects and product development that aims to maximize a development team’s speed and flexibility. (AF 86). There are three core players involved in the scrum process. The Development Team carries out the actual technical work of designing, developing, testing, and delivering the software product. (AF 87). The Product Owner, who may be a member of the Development Team, represents the voice of the customer and maintains the product backlog, which is the ordered list of product features that the team needs to develop. (AF 87, 92). The Scrum Master is not a team leader or project manager, but rather is solely responsible for ensuring the scrum process is applied properly and for facilitating the Development Team’s work by protecting the team and keeping it focused. (AF 87). During brief daily meetings, the Scrum Master identifies impediments to the team’s ability to deliver product and meet goals, then he must resolve these problems outside of the meetings. (AF 88-89). The Scrum Master also holds retrospective meetings at the end of each product development phase to discuss what went well and what can be improved. (AF 90). Thus, according to the literature submitted by the Employer, the Scrum Master’s primary role is that of a business process facilitator, which is consistent with the job duties the Employer listed for the Scrum Master job opportunity. While technical know-how and people management skills might aid the Scrum Master in carrying out this role, he is not directly involved in the technical work of designing and creating the software product, nor is he vested with supervisory or people management authority outside of his capacity as a coordinator, facilitator, and problem-solver.

B. A Scrum Master is not a Management Analyst (SOC 13-1111).

According to O*NET, the primary role of a Management Analyst (SOC 13-1111) is to “[c]onduct organizational studies and evaluations, design systems and procedures, conduct work simplification and measurement studies, and prepare operations and procedures manuals to assist management in operating more efficiently and effectively.” O*NET lists the following ten core job duties, in descending order of importance, for Management Analysts³:

1. Gather and organize information on problems or procedures.
2. Analyze data gathered and develop solutions or alternative methods of proceeding.
3. Confer with personnel concerned to ensure successful functioning of newly implemented systems or procedures.
4. Develop and implement records management program for filing, protection, and retrieval of records, and assure compliance with program.
5. Review forms and reports and confer with management and users about format, distribution, and purpose, and to identify problems and improvements.
6. Interview personnel and conduct on-site observation to ascertain unit functions, work performed, and methods, equipment, and personnel used.
7. Document findings of study and prepare recommendations for implementation of new systems, procedures, or organizational changes.
8. Prepare manuals and train workers in use of new forms, reports, procedures or equipment, according to organizational policy.
9. Design, evaluate, recommend, and approve changes of forms and reports.
10. Plan study of work problems and procedures such as organizational change, communications, information flow, integrated production methods, inventory control, or cost analysis.

A Scrum Master must perform the first three duties listed above: he is responsible for gathering information, analyzing that information to develop solutions to problems, and conferring with personnel to ensure successful functioning of systems or procedures (specifically, the scrum system). But he performs these job duties in a very different context from a Management Analyst. A Scrum Master is an active participant in product development projects, while a Management Analyst is not. A Scrum Master identifies project-specific problems by holding brief meetings with the development team while the project is underway. By contrast, a Management Analyst identifies systemic problems by analyzing data gathered through studies and observation. A Scrum Master must find a way to fix project-specific problems as quickly as possible so that the development team can complete the project as planned, and through it all must ensure that a particular business process, the “scrum” process, is being implemented properly. By contrast, a Management Analyst is not responsible for immediately fixing the problems he identifies. Rather, he recommends broad changes to avoid the problems in the future, and helps implement new or changed business processes rather than serving as the enforcer of one particular process.

³ O*NET can be accessed at <http://www.onetonline.org>. Occupations are searchable by SOC code. The “Details Report” for each occupation, which can be accessed by clicking the “Details” tab, includes a list of core tasks that are associated with the occupation, ranked by their importance to the occupation.

Review of the job duties listed on O*NET further shows that a Scrum Master is not responsible for many of the tasks a Management Analyst performs. The Scrum Master does not plan and conduct studies of work problems and procedures (job duties #10 and #6 listed above) – the Scrum Master analyzes data on-the-ground rather than through studies. He does not recommend new systems, procedures, or organizational changes (#7) – he uses only the scrum system, and works at the project level rather than the organizational level. He does not confer with managers about forms and reports, recommend and design changes in forms and reports, prepare manuals, or train workers in the use of new forms, reports, and procedures (#5, #8, and #9) – again, the Scrum Master implements only the scrum procedure, not any new business procedures or broad organizational changes, and the Scrum Master’s job duties as described by the Employer do not include working with forms, reports, and manuals. However, the Employer’s job description indicates the Employer expects the Scrum Master to help develop, organize, track, and manage plans and schedules for particular projects, which are not tasks a Management Analyst performs.

In summary, the job duties of a Management Analyst are not the same as the job duties for a Scrum Master. After reviewing the job duties and job description listed on O*NET, it appears that a Management Analyst’s primary responsibilities are to observe and analyze business processes and recommend changes. By contrast, a Scrum Master enforces one particular business process, the scrum process, and solves project-specific problems as they arise. Therefore, a Scrum Master is not properly categorized as a Management Analyst.

C. A Scrum Master is not a CI Systems Manager (SOC 11-3021).

According to O*NET, the primary role of a Computer and Information (CI) Systems Manager (SOC 11-3021) is to “[p]lan, direct or coordinate activities in such fields as electronic data processing, information systems, systems analysis, and computer programming.” O*NET lists the following 17 core job duties for CI Systems Managers, in descending order of importance:

1. Review project plans to plan and coordinate project activity.
2. Manage backup, security and user help systems.
3. Develop and interpret organizational goals, policies, and procedures.
4. Develop computer information resources, providing for data security and control, strategic computing, and disaster recovery.
5. Consult with users, management, vendors, and technicians to assess computing needs and system requirements.
6. Stay abreast of advances in technology.
7. Meet with department heads, managers, supervisors, vendors, and others, to solicit cooperation and resolve problems.
8. Provide users with technical support for computer problems.
9. Recruit, hire, train and supervise staff, or participate in staffing decisions.
10. Evaluate data processing proposals to assess project feasibility and requirements.
11. Control operational budget and expenditures.
12. Review and approve all systems charts and programs prior to their implementation.

13. Direct daily operations of department, analyzing workflow, establishing priorities, developing standards and setting deadlines.
14. Assign and review the work of systems analysts, programmers, and other computer-related workers.
15. Evaluate the organization's technology use and needs and recommend improvements, such as hardware and software upgrades.
16. Prepare and review operational reports or project progress reports.
17. Purchase necessary equipment.

Review of O*NET's occupational profile for CI Systems Managers suggests that a CI Systems Manager holds a relatively high-level managerial position. Sample job titles O*NET lists for this occupational category include "IT Director," "Data Processing Manager," "Computing Services Director," and the like. These titles denote a person who is in charge of computers and tech support, and who supervises a staff of computer technicians. By contrast, a Scrum Master, as described by the Employer, is not a manager of other employees and lacks the authority to perform many of the job duties listed for a CI Systems Manager, such as "[r]ecruit, hire, train and supervise staff, or participate in staffing decisions" (job duty #9); "[d]irect daily operations of [a] department" (#13); or assign and review other employees' work (#14).

A CI Systems Manager "[r]eview[s] project plans to plan and coordinate project activity" (job duty #1) and "[p]repare[s] and review[s] operational reports or project progress reports" (#16). At first glance, these tasks seem to overlap with a Scrum Master's job duties of helping plan and coordinate development projects. However, when reviewed in the context of the other job duties listed for a CI Systems Manager, it becomes obvious that the apparent overlap is superficial. A CI Systems Manager might review and sign off on project plans, but his day-to-day job responsibilities do not include participating in specific projects. As the person responsible for directing the "daily operations of [the] department" (#13), he would be expected to review project plans in a managerial capacity in order to delegate work to employees under his supervision. This is obviously very different from a Scrum Master, who reviews and coordinates project plans in his capacity as a project facilitator working closely with the team to carry out the project as planned.

Similarly, a CI Systems Manager is responsible for developing and interpreting organizational goals and policies (#3), which seems to overlap the job duties of a Scrum Master. However, a CI Systems Manager performs this work in an entirely different context than a Scrum Master. A Scrum Master implements the specific scrum procedure in the context of a product development project, while a CI Systems Manager implements company goals and policies in his capacity as the head of a department. These jobs are very different.

Additionally, the job duties listed on O*NET for a CI Systems Manager show that, aside from the managerial aspects of his position, the main goal of his job is to provide computer support services. Many of his most important job duties are oriented to tech support, such as: "Manage backup, security and user help systems"; "Develop computer information resources, providing for data security and control, strategic computing, and disaster recovery"; "Consult with users, management, vendors, and technicians to assess computing needs and system requirements"; and "Provide users with technical support for computer problems" (#2, 4, 5, 8).

These job duties are not included in the Employer's job description for the Scrum Master position. A Scrum Master may need to assess a development team's computer needs or help them solve tech-related problems, but his role is not defined by providing tech support. His role is broader in the sense that he needs to be able to address many different kinds of problems other than just tech-related issues, and narrower in the sense that he is only addressing problems in the context of a particular team and project rather than as the director of a department. In sum, a Scrum Master is not properly categorized as a CI Systems Manager.

D. A Scrum Master is similar to an IT Project Manager (SOC code 15-1199.09).

According to O*NET, the primary roles of an IT Project Manager (SOC 15-1199.09) include: "Plan, initiate, and manage information technology (IT) projects. Lead and guide the work of technical staff. Serve as liaison between business and technical aspects of the project. Plan project stages and assess business implications for each stage. Monitor progress to assure deadlines, standards, and cost targets are met." O*NET lists the following 21 core job duties for IT Project Managers, in descending order of importance:

1. Manage project execution to ensure adherence to budget, schedule, and scope.
2. Develop or update project plans for information technology projects including information such as project objectives, technologies, systems, information specifications, schedules, funding, and staffing.
3. Monitor or track project milestones and deliverables.
4. Confer with project personnel to identify and resolve problems.
5. Develop and manage work breakdown structure of information technology projects.
6. Submit project deliverables, ensuring adherence to quality standards.
7. Prepare project status reports by collecting, analyzing, and summarizing information and trends.
8. Direct or coordinate activities of project personnel.
9. Establish and execute a project communication plan.
10. Assign duties, responsibilities, and spans of authority to project personnel.
11. Schedule and facilitate meetings related to information technology projects.
12. Initiate, review, or approve modifications to project plans.
13. Perform risk assessments to develop response strategies.
14. Monitor the performance of project team members, providing and documenting performance feedback.
15. Negotiate with project stakeholders or suppliers to obtain resources or materials.
16. Identify need for initial or supplemental project resources.
17. Coordinate recruitment or selection of project personnel.
18. Identify, review, or select vendors or consultants to meet project needs.
19. Develop and manage annual budgets for information technology projects.
20. Develop implementation plans that include analyses such as cost-benefit or return on investment.
21. Assess current or future customer needs and priorities through communicating directly with customers, conducting surveys, or other methods.

The Employer asserts that a Scrum Master does not hold people management responsibilities and, by definition, is not a project leader. Rather, a Scrum Master holds a

distinct role within the special “scrum” business system. However, after reviewing the evidence the Employer has provided describing the scrum system and the Scrum Master’s role within it (AF 86-96), it appears that the scrum system breaks down the traditional roles within a team and allocates some of the traditional responsibilities of a project leader to various different participants in the product development process. A scrum Development Team is supposed to be self-organizing, to some extent. (AF 87, 88). The “Product Owner,” the member of the team who represents the voice of the customer, assumes some of the planning and leadership responsibilities of a traditional project leader in that he determines which product features are most important and in what order they will be developed. (AF 87). However, of the three key players recognized within the scrum system, the Scrum Master holds the role that is most analogous to a project leader. (AF 87). The Employer’s listed job duties for the Scrum Master job opportunity are consistent with this understanding of the scrum system. (AF 102).

Review of the listed job duties for an IT Project Manager confirms that many of these duties directly and closely overlap with the job duties the Employer listed on its PWD application for a Scrum Master. For example, an IT Project Manager must “[c]onfer with project personnel to identify and resolve problems” (job duty #4) and “[s]chedule and facilitate meetings” related to projects (#11). Similarly, the Employer indicated on the PWD application that the Scrum Master’s responsibilities would include holding regular meetings with project teams to identify problems, then help resolve the problems. Specifically, the Employer indicated the Scrum Master must “confer with the software development team and project leader to enable successful functioning of the Scrum system and procedures,” “[f]acilitate project planning and communication among team members through daily meetings, reviews, retrospectives, sprint and release planning, demos, and other Scrum-related meetings,” and “[a]nalyze and monitor team performance, identify problems, and suggest improvements to the Scrum system.” (AF 102).

The Employer also delegated to the Scrum Master many of the planning, organizing, and coordination duties that would traditionally fall on a project leader or manager. For example, O*NET indicates an IT Project Manager’s most important task is to “[m]anage project execution to ensure adherence to budget, schedule, and scope” (job duty #1). Similarly, the Employer expects the Scrum Master to “[m]anage project plans and schedules, ensuring successful completion within scope, budget, time, and quality parameters.” (AF 102). An IT Project Manager’s second and third most important duties listed on O*NET are to “[d]evelop or update project plans for information technology projects including information such as project objectives, technologies, systems, information specifications, schedules, funding, and staffing” (#2) and “[m]onitor or track project milestones and deliverables” (#3). Similarly, a Scrum Master must “[d]evelop and update project plans for the roll-out of product releases”; “[m]aintain, monitor, and update internal project tracking systems”; and “[p]articipate in the organization and planning of the development schedule based on identifiable critical path, task dependencies, and major milestones.” (AF 102).

In short, it appears that the Scrum Master’s involvement in scheduling, planning, and coordinating projects, as described by the Employer, overlaps job duties #1, 2, 3, 5, 6, 7, 9, and 12 listed on O*NET for IT Project Managers. The Scrum Master’s problem-solving and troubleshooting responsibilities overlap with job duties #4 and 13 listed on O*NET, and his responsibility for holding scrum meetings overlaps with job duty #11. The Scrum Master does not perform some of the listed tasks for IT Project Managers, such as job duties #8, 10, 14, and

17, which are personnel management tasks that require managerial authority. However, the Scrum Master's job responsibilities have much more overlap with those of an IT Project Manager than a Management Analyst or CI Systems Manager. The overlap is more than superficial – the Scrum Master appears to assume many of the duties for which a project manager would hold responsibility in a non-scrum setting. Accordingly, we find that a Scrum Master is more properly categorized as an IT Project Manager than a Management Analyst or CI Systems Manager.

The Center Director argues that it would be inappropriate to apply the IT Project Managers category, SOC 15-1199.09, because it is part of the SOC 15-1199 series. This series consists of new and emerging occupations for which the OES Survey does not collect wage data. The Center Director asserted, "O*NET posts these occupations before completing its characterization process and does not always have information on the education and job zones available. They also do not consider the similarity of skills or preparation when assigning the new and emerging occupations to the same SOC code. The Department will always opt to use a more specific SOC code if one is available."

We reject the Center Director's argument, because SOC 15-1199.09 is the most specific SOC code available in this case. The evidence does not show that a more specific SOC code is available. The Center Director failed to identify a SOC category with job duties that overlapped the duties of a Scrum Master, as described on the Employer's prevailing wage application. Instead, the Center Director assigned the Scrum Master position to the SOC/O*NET category "Computer and Information Systems Manager," SOC 11-3021. For the reasons discussed above, however, a Scrum Master's job duties are not similar to those of a CI Systems Manager, and SOC 11-3021 is inappropriate here. The "Management Analysts" category suggested by the Employer, SOC 13-1111, is also inappropriate. After considering all the evidence before us, we find that the most specific occupational title applicable to the Scrum Master position is that of an "Information Technology Project Manager," SOC 15-1199.09. Despite its characterization as a new and emerging occupation, this is the most specific SOC code available. Accordingly, we find that the Center Director abused his discretion in assigning the Scrum Master position the wages listed for SOC 11-3021.

ORDER

IT IS HEREBY ORDERED that the prevailing wage determination made by the Center Director is **VACATED** and this matter is **REMANDED** to the Center Director for further processing consistent with this order.

For the panel:

ALAN L. BERGSTROM
Administrative Law Judge

ALB/ENK/jcb
Newport News, Virginia

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.