

FLSA-403

October 12, 1983

This in reply to your letter of August 4 requesting an opinion as to whether the Aquarist-divers and aquatic biologist employed by the aquarium are exempt professional employees within the meaning of Section 13(a)(1) of the Fair Labor Standards Act (FLSA).

An aquarist is primarily responsible for the care, feeding, food preparation, disease detection, and treatment of aquatic specimens in the collection. The aquatic biologist has similar duties but has a more intense role in assuring water quality and the diagnosis, prevention, and cure of diseases of specimens, including pathology and autopsy. Both the aquatic biologist and the aquarist participate in specimen collection trips during which SCUBA diving skills are utilized. Diving skills are also used during some procedures at the Aquarium. You indicate that all aquarist and the aquatic biologist are paid on a salary basis in excess \$250 per week. You have also enclosed position descriptions and other exhibits which in great detail explain the duties of the aquarists, and in lesser detail the duties of the aquatic biologist.

According to the information in Exhibit 6, an aquarist begins a day by inspecting the exhibits and exchanging information with other aquarists. Much of what has been learned about fish husbandry is unpublished and it is through this exchange of information that oral histories are maintained. An aquarist spends Mondays and Thursdays almost exclusively in food preparation and feeding. It takes about 1 1/2 to 3 hours for each aquarist to cut, chop, dice, and mince the amounts of food necessary to feed exhibit animals, and an equal amount of time to feed them. Tank maintenance is described as the most time-consuming aspect of an aquarist's job.

Most tank work is reserved for light feeding days on Tuesday, Wednesday, and Friday, but some amount of cleaning must be part of the daily routine because an aquarist is responsible for a minimum of 20 display tanks and nearly an equal number of reserve tanks. Cleaning involves lowering the water level in the tank, scrubbing and hosing algae from walls and windows, and siphoning out loose debris. Aquarists also design and construct new exhibits in the few remaining hours in their weekly schedules after completing feeding and tank maintenance activities. Because of the latter responsibilities, it is often two or three months before a new exhibit goes on view.

In constructing an exhibit, an aquarist draws up a design to scale according to the gallery plan and then seeks approval from the curator. The old tank is then taken down and inspected for loose fiberglass or damaged concrete. Old window caulking is removed with hand tools and then the window is recaulked. After allowing sufficient time for curing, a concrete window pad stopper is cast which allows easier cleaning. Then a 3/4 inch under gravel filter is constructed, which allows the fish to be kept alive on an emergency generator in case of a power failure. The aquarist then begins building the exhibit using rock, coral, and other decorative materials, which are secured with urethane sealant and/or mortar. Rockwork is then allowed to cure by water soaking and/or acid baths, and, when dry, painted with epoxy, enamel, or acrylic paint. Finally, a window shade board is constructed from 2 x 12 inch lumber and painted blue to match the rest of the exhibit. The tank is then ready to be filled with water and specimens.

While the position description indicates that an aquarist should have a bachelor's degree in biological sciences, experience in lieu of formal education is acceptable. For example, advanced hobbyist experience of aquatic animals is considered valuable qualifying experience for an aquarist position.

According to the staff profile in Exhibit 6, three senior aquarists did not have bachelor's degrees. Of the other seven aquarists then employed, six had at least a bachelor's degree in biological science, and one had a bachelor's degree in the social sciences. We further note in Exhibit 5 that aquarium information is often based on oral traditions and history which are rarely written down. Aquarists must exchange information with their counterparts and learn through hands-on experience and training. This is clear from the description of the aquarist training program in Exhibit 1.

Based upon the information you have presented, we conclude that the aquarists are not professional employees within the meaning of section 13(a)(1) and section 541.3 of Regulations, 29 CFR Part 541. The work performed by the aquarists does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study as distinguished by a general academic education and from apprenticeship and from training in the performance of routine, mental, or physical processes. It is clear from the information presented that the aquarist need not have a degree in biological sciences, or any degree for the matter, to perform the job function. Subprofessional training and experience, advanced hobbyist experience, and skills acquired through on-the-job training and experience will qualify the aquarist for the job. The facts suggest that the aquarist is best characterized as a skilled nonexempt technician.

We also wish to comment with regard to the diving activities of the aquarists. Collecting and transporting specimens is not necessarily professional work within the meaning of section 13(a)(1). Neither is the fact that OSHA has classified the type of diving performed by the aquarists as "scientific diving", for the purpose of exempting such diving from the commercial diving safety regulations, persuasive. Such classification by OSHA for safety purposes does not mean that divers performing scientific diving are engaged in professional work as that term is defined and delimited for the purposes of FLSA.

With respect to the aquatic biologist, there is not sufficient information for us to make a determination. Some of the responsibilities listed in the position description represent skills possessed by laboratory technicians, which we have traditionally considered to be nonexempt. However, if the primary duty of the aquatic biologist is diagnosis, treatment, and prevention of disease in the specimen collection, for which at least a bachelor's degree with specialization in parasitology or ichthyology is mandatory, such an employee may qualify as a professional within the meaning of section 541.3, provided the other tests in that section are met.

We hope the above discussion is responsive to your inquiry. Please let us know if you have further questions.

Sincerely,

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