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12 **SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**
13 **BOARD OF RETIREMENT**

14) Administrative Appeal
15) File No. 21-1006-1095.8.002R-PL
16)
17) *Assigned to: Duane E. Bennett*
18)

19 In the Matter of: *Alameda* Administrative Appeal of
20 CLINICAL LABORATORY SCIENTISTS
21 (Formerly known as Professional Lab Technicians)

22 **RESPONDENT SAN BERNARDINO COUNTY**
23 **EMPLOYEES' RETIREMENT**
24 **ASSOCIATION'S POST-HEARING**
25 **STATEMENT**

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I. INTRODUCTION

This appeal turns on one question: did Appellants¹ receive D06 in exchange for work performed during their normal working hours? The record clearly answers that question: no, they did not. The witnesses, including Appellants' own, confirmed that D06 shifts occur only on Friday and Saturday nights, fall entirely outside any CLS's assigned tour of duty, and are filled through voluntary sign-ups rather than by assignment. The testimony also established that D06 pay is tied to the number of tests processed, not hours worked; that CLSs receive no hourly wages during these shifts; and that declining or missing a D06 shift never requires the use of paid leave. Payroll data reinforces the point by showing that no Appellant, and no CLS, worked D06 shifts on any regular schedule.

Taken together, this evidence demonstrates that D06 compensates Appellants for additional services performed outside normal working hours. CERL prohibits treating such payments as compensation earnable, and D06 must thus be excluded from Appellants' retirement allowance calculations.

II. BACKGROUND

A. The SBCERA Board refers this matter back to the Hearing Officer after discovering that D06 is not paid as a differential.

SBCERA is governed by the County Employees Retirement Law of 1937 ("CERL") and the Public Employees' Pension Reform Act ("PEPRA"), among other laws. PEPRA, which became effective on January 1, 2013, created a new set of pensionability rules for public retirement system members whose membership postdated PEPRA. PEPRA also substantially amended existing provisions of CERL. Following PEPRA's enactment, SBCERA must exclude "payments for additional services rendered outside of normal working hours" from "compensation earnable"—an input for calculating retirement allowances under CERL. (Gov. Code, § 31461 ("Section 31461"), subd. (b)(3).) SBCERA must also exclude such payments from "pensionable compensation"—an input for calculating retirement allowances under PEPRA. (Gov. Code, § 7522.34, subd. (c)(6).)

¹ This brief incorporates by reference all abbreviations and shorthand defined in SBCERA's Pre-Hearing Brief.

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1 Litigation challenging PEPRA’s amendments to Section 31461 was filed shortly after PEPRA’s
2 enactment, and SBCERA thus deferred implementation of those amendments until the Supreme Court
3 resolved that litigation with its decision in *Alameda County Deputy Sheriff’s Assn. v. Alameda County*
4 *Employees’ Retirement Assn.* (2020) 9 Cal.5th 1032. In *Alameda*, the Court held unequivocally that CERL
5 systems must apply the PEPRA amendments to Section 31461 and that members have no contractual,
6 equitable, or constitutional rights to preexisting practices inconsistent with the statute. (*Id.* at pp. 1067,
7 1069, 1074, 1103.) Thus, following *Alameda*, SBCERA reviewed its compensation practices and
8 concluded that D06 was remuneration for additional services rendered outside normal hours. (1 AR-105–
9 108 [Resolution No. 2020-9], 121 [compensation earnable table].) As required, it adopted Resolution No.
10 2020-9 to exclude D06 from compensation earnable. (1 AR-105–0108, 121, 1369 [proposed Resolution
11 No. 2024-6].) The Board also offered affected retirees the opportunity to appeal that exclusion. (1 AR-
12 182–189 [Amended Resolution No. 2020-8.02], 1369.)

13 In one such appeal, brought by CLSs at ARMC, a hearing officer issued a recommended decision
14 in 2022 (the “2022 Decision”) concluding that D06 was a form of differential pay for work performed
15 during normal working hours, and thus was compensation earnable. (3 AR-0794–0802 [2022 Decision].)
16 The Board adopted that decision, and SBCERA attempted to implement it. (5 AR-1321 [Board Meeting
17 Minutes (01.06.2022)], 1326 [SBCERA letter to L. Chesonis].) As part of that implementation effort, staff
18 sent questions to the San Bernardino County Human Resources department (“County HR”). (5 AR-1332–
19 1336 [email correspondence with County HR], 1364–1365 [staff report encouraging adopting on
20 Resolution No. 2024-6].) County HR’s answers to those questions, however, revealed that the facts
21 surrounding D06 were considerably different than the 2022 Decision suggested. That is, SBCERA’s
22 implementation efforts revealed that CLSs received D06 not as a differential—an hourly premium or
23 incentive layered on top of base wages for the *same* services rendered for those base wages—but rather
24 as a per-service payment received only during specific *additional* shifts occurring separately from the
25 services for which the CLSs were paid their base wages. (Ex. 2 at p. 12²; 5 AR-1332–1336, 1364–1365.)
26 Specifically, D06 is paid to CLS employees working voluntary overnight shifts between 11:30 p.m. and
27

28 ² SBCERA has submitted three memoranda of understanding (“MOUs”) covering the period from 2016 to 2028. These MOUs are functionally identical for purposes of the issue before the Hearing Officer, and SBCERA thus limits its cites in this brief to a single exemplar MOU covering 2020–2024.

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1 7:30 a.m. on Fridays and Saturdays. (Ex. 2 at p. 12; 5 AR-1333.) One (or more) CLS remains in residence
2 at ARMC and receives \$10 per lab test processed.

3 After SBCERA brought this information to the Board in December 2024, the Board directed that
4 this matter be referred back to a hearing officer for re-adjudication *de novo*, and for development of a
5 factual record that includes live testimony, rather than reliance on a documentary record alone. (Compare
6 2 AR-286–288 [2021 Notice of Assignment] with 5 AR-1381–1386 [2025 Notice of Remand].) Five
7 general issues were referred for adjudication: (1) the Appellants’ regular working hours and standard
8 schedules; (2) the distinctions between differential and standby pay; (3) the work for which Appellants
9 receive D06; (4) whether the work for which Appellants receive D06 is within or outside of Appellants’
10 normal working hours; and (5) whether SBCERA must exclude D06 from Appellants’ retirement
11 allowance calculations under Government Code sections 7522.34 and 31461. (July 9, 2025 Prehearing
12 Conference Order (the “July 9 Order”).)

13 **B. The September 29 hearing confirmed that D06 is additional pay for additional**
14 **work, not pay for work performed within Appellants’ “normal working hours.”**

15 The hearing was held on September 29, 2025. Appellants’ witnesses, Ronald Sanchez and Martin
16 Santoyo, testified that D06 shifts (also referred to as call shifts) are weekend night shifts that CLSs sign
17 up for rather than part of any regular tour of duty. They confirmed that CLSs are not required to use leave
18 when calling out of a D06 shift, and Sanchez testified that he never assigned anyone a D06 shift during
19 his four years as a supervisor. SBCERA’s witnesses, Ana Rosales, Elias Gomez, Carlos Prieto, and Amy
20 McInerny, corroborated that D06 is paid on a per-test basis, not as hourly wages, and that D06 shifts are
21 voluntary, off-schedule work. Taken together, the testimony establishes that D06 compensates additional
22 services outside normal working hours.

23 Appellants first called Sanchez, a retired SBCERA member who worked as a CLS at the County
24 hospital (now ARMC) from 1981 until retirement and later served as a supervising CLS. (Tr. 22:13–21,
25 41:8–13.) Sanchez explained that when he supervised the lab, D06 shifts were filled by circulating a
26 spreadsheet among qualified CLSs, who signed up for the weekend night shifts they could work. He used
27 the term “qualified” because not all CLSs worked D06 shifts; they first had to be cross-trained in each of
28 the departments where the tests were performed. If a CLS was available for a particular Friday or Saturday

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1 night, they signed up; if not, the supervisor moved to the next person. (Tr. 41:13–42:6, 44:24–45:6, 46:1–
2 47:2, 55:12–21, 58:12–18.) He described this sign-up process as “the first way” D06 shifts were filled,
3 with CLS availability driving the schedule. (Tr. 55:22–25.) If gaps remained after sign-ups, the supervisor
4 could ask additional CLSs to take shifts, but Sanchez testified that he never compelled anyone to work a
5 D06 shift during his four years as a supervisor. (Tr. 47:3–8, 56:17–57:2.) Sanchez himself worked roughly
6 200 D06 shifts, signing up for “every single one” and never being assigned one by management. (Tr.
7 54:10–20.) He also confirmed that D06 pays \$10 per call or test, with no associated hourly pay. (Tr. 61:5–
8 7.)

9 Santoyo, a current CLS at ARMC who has worked D06 shifts, offered similar testimony. (Tr.
10 104:22–105:11.) He stated that D06 shifts are filled through sign-up sheets, with CLSs volunteering for
11 specific call shifts about a month in advance. (Tr. 109:18–19, 110:17–25.) If sign-ups fall short,
12 supervisors “ask or request” CLSs to take remaining shifts, though Santoyo noted that staffing shortages
13 are infrequent because CLSs “do a pretty good job of everybody signing up and pitching in and doing
14 their part.” (Tr. 112:5–10, 113:7–11.) He described a brief period in 2016 when staffing levels temporarily
15 required expanding D06 pay to additional weekend night shifts and making some call shifts mandatory,
16 but he confirmed that this practice ended years ago. (Tr. 114:1–21.) Santoyo also testified that a CLS who
17 needs to cancel a D06 shift, due to illness for instance, simply calls off without using PTO, and the
18 supervisor arranges coverage. (Tr. 119:12–16.)³

19 Rosales, the County’s EMACS Division Chief in Human Resources, described the County’s D06
20 review conducted at SBCERA’s request as part of its post-Alameda inquiry. (Tr. 74:9–75:3.) She testified
21 that HR and EMACS staff queried the payroll system and coordinated with ARMC to understand how
22 D06 operates. (Tr. 74:18–75:7.) She confirmed that D06 is not paid by the hour, that EMACS records
23

24 ³ Initially, Santoyo testified that a CLS is only excused from using PTO to cover a missed D06 shift if
25 they have already worked the required 80 hours in that pay period. If not at the 80-hour threshold, Santoyo
26 explained that he might “take PTO for that extra day” to avoid his paycheck being “short.” (Tr. 116:11–
27 19, 118:11–22.) However, that confusion appears to stem from the specific use of “PTO” as the leave
28 example. As Santoyo explained, “no matter what . . . if I was . . . short . . . for whatever reason . . . I could
put . . . in PTO.” (Tr. 117:20–118:3.) And when asked directly if the hours worked in D06 shifts count
toward reaching the 80-hour threshold that would make an employee overtime eligible, he responded “I
don’t know. Not that I’m aware of. I’m not sure how that works.” (Tr. 120:9–13.) The relevant point
remains that CLSs are not *required* to put in *leave of any kind* when calling out of a D06 shift because it
is not part of their regular schedule. (Tr. 142:1–3, 143:23–144:3, 145:11–15.)

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1 entries based on the number of lab tests or “tasks” performed, and that the County has no other pay code
2 paid by task. (Tr. 75:8–16.)

3 Gomez, a Human Resources Analyst reporting to Rosales, testified that D06 came to HR’s
4 attention when an ARMC employee questioned its retirement treatment, prompting SBCERA to request
5 supporting data. (Tr. 80:5–13.) He explained that Appellants’ pay stubs (Exhibits 4–7) label D06 as “lab
6 tech diff,” but the D06 entries represent task counts rather than hours. (Tr. 84:9–85:10.) For example, he
7 testified that Ms. Widjaja’s pay stub shows she “handled 37 calls or tests,” resulting in \$370 in D06 pay.
8 (Tr. 86:7–21.) Mr. Sung’s paycheck shows 141 D06 “instances,” totaling \$1,410, confirming the \$10-per-
9 call structure. (Tr. 87:4–10.) He further explained that employees are paid by totaling the number of tests
10 performed during the shift and dividing them equally among CLSs who worked that shift. (Tr. 85:11–17.)

11 Gomez also testified regarding Exhibit 8, the Daily Reported Time data he generated from
12 EMACS. (Tr. 88:16–24.) He explained that LTSB1 is the time-reporting code associated with D06 and
13 that LTSB1 entries reflect D06 work. (Tr. 89:11–18, 90:18–21.) The “Hours Quantity” field in Exhibit 8
14 refers to the number of calls or tests performed, not hours worked. (Tr. 91:4–8.) He illustrated this by
15 walking through a line showing 71 LTSB1 units for Ms. Widjaja on October 23, 2020. (Tr. 91:6–24.)
16 Gomez also explained that Exhibit 8 reflects all D06 work reported within EMACS’s three-year retention
17 period, while the County can separately retrieve ten years of paycheck-level D06 data. (Tr. 90:8–11,
18 92:16–17, 96:12–18.) He was not aware of any other County pay code paid in the same per-task manner.
19 (Tr. 95:16–22.)

20 Prieto, ARMC’s Associate Hospital Administrator responsible for overseeing the clinical
21 laboratory, testified that D06 pays CLSs a flat \$10 per lab order during weekend night shifts, and that an
22 “exam order” may consist of one or multiple tests. (Tr. 123:13–24.) He confirmed that CLSs receive no
23 other compensation for D06 shifts. (Tr. 123:25–126:3.)

24 Prieto testified that D06 shifts are filled by sign-up and are voluntary. When asked whether D06
25 shifts are “assigned, or . . . volunteered for,” he responded: “They’re by sign up, so you volunteer.” (Tr.
26 124:20–22, 125:6–9.) He further confirmed that D06 does not correspond to a CLS’s regularly scheduled
27 shift and is not paid for work that is part of an assigned shift. (Tr. 124:14–19, 127:10–15.)
28

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1 On redirect, Prieto distinguished regular shifts from D06. He testified that day, evening, and non-
2 D06 night shifts fall within a CLS's tour of duty and cannot be refused wholesale. (Tr. 155:25–156:8.)
3 When asked whether D06 shifts fall within that tour of duty, he answered “no,” and confirmed that D06
4 shifts sit outside that tour of duty. (Tr. 142:1–3, 145:11–15, 156:8–10.) D06 shifts are not a “role
5 responsibility” of a CLS like regular shift coverage. (Tr. 156:11–16.) During Prieto's nearly four years
6 overseeing the lab, no CLS was ever assigned a D06 shift. (Tr. 143:5–8, 156:17–24.)

7 Prieto also contrasted missing a regular shift with missing a D06 shift. A CLS who cannot work a
8 regular shift must use some form of leave, like PTO. (Tr. 143:16–22.) A CLS who cannot work a D06
9 shift does not. (Tr. 143:23–144:3.) Prieto further confirmed that D06 shifts have no impact on a CLS's
10 overtime hours; that is, hours worked on a D06 shift do not count toward the threshold hours at which an
11 employee would be eligible for overtime. (Tr. 128:13–23.)

12 Addressing hypotheticals posed by Appellants' counsel and the Hearing Officer, Prieto
13 acknowledged that management could theoretically order a CLS to work a D06 shift but warned that doing
14 so would have “other implications,” including labor-law consequences, and does not reflect ARMC's
15 actual practice. (Tr. 147:18–19, 150:4–12.) He testified that management has no right to assign D06 shifts,
16 that an employee would not have to comply with such an assignment, and that refusal would not trigger
17 discipline. (Tr. 152:23–153:1, 153:20–154:14.) Availability for D06 is voluntary and at the employee's
18 discretion. (Tr. 154:12–16.)

19 McInerny, SBCERA's Chief Financial Officer, testified about SBCERA's post-*Alameda* review
20 and its efforts to identify pay items reflecting work outside normal hours. (Tr. 159:19–161:12.) She
21 testified that SBCERA attempted to apply the 2022 decision's in-residence/out-of-residence distinction
22 but learned from the County that no such distinction exists in the underlying payroll data. (Tr. 162:21–
23 163:14.) After further inquiry, she learned that D06 was not a differential paid at an hourly rate but a per-
24 task pay item for work performed on specific shifts. (Tr. 164:5–7.) She explained that a differential adds
25 an amount “on top” of an employee's regular hourly rate for regular work, whereas D06 is paid per call
26 for work not performed on any regular schedule. (Tr. 164:10–18, 164:21–165:7, 174:18–20, 192:8–10.)
27 She also testified that there is a clear break between regular and D06 shifts, even when an employee works
28 them back-to-back: if a CLS works a weekend night shift following their regular shift, they clock out at

1 the end of the regular shift ending the hourly compensation, and only then does compensation change to
2 the D06 code. (Tr. 173:13–174:7.)

3 **III. ARGUMENT**

4 **A. D06 shifts are not part of Appellants’ “normal working hours.”**

5 **1. D06 shifts are filled on a voluntary basis and are not assigned to any CLS.**

6 D06 shifts fall outside Appellants’ normal working hours because they are extra, optional shifts
7 that CLSs choose to work. The Supreme Court has made clear that retirement systems must base benefits
8 on an employee’s rate of pay, not on how many extra hours or days the employee works. Within a given
9 class of employees, differences in pensionable outcomes turn on variations in pay rate during the final
10 compensation period. They do not turn on how often an employee decides to work beyond the hours that
11 make up the standard tour of duty. (*Alameda County Deputy Sheriff’s Assn. v. Alameda County*
12 *Employees’ Retirement Assn.* (2020) 9 Cal.5th 1032, 1096.) Allowing employees to enhance their
13 retirement allowances by volunteering for additional shifts would undermine that rule by tying pension
14 levels to workload rather than rate of pay.

15 The testimony firmly establishes that D06 shifts are voluntary and never part of an assigned
16 schedule. Sanchez explained that during his four years supervising the lab, he did not direct anyone to
17 work a D06 shift. (Tr. 56:17–57:2.) He also described his own experience, noting that he worked roughly
18 200 D06 shifts because he added his name to every available slot and was never forcibly scheduled into
19 one by management. (Tr. 54:10–20.) Santoyo confirmed that D06 coverage is arranged in advance using
20 monthly sign-up sheets, with CLSs choosing which weekend night shifts they want to take. (Tr. 109:18–
21 19, 110:17–25.) Prieto likewise testified that D06 shifts are filled through sign-up and not assignment,
22 stating in substance that CLSs volunteer for those shifts. (Tr. 124:20–22, 125:6–9.) He further explained
23 that providing D06 coverage is not part of a CLS’s “role responsibilities” in the way that regular shift
24 assignments are. (Tr. 156:11–16.) In his nearly four years managing the lab, no CLS was ever assigned to
25 work a D06 shift. (Tr. 143:5–8, 156:17–24.)⁴

26
27 ⁴ Notably, the four years during which Prieto managed the ARMC lab were different from the four years
28 that Sanchez was a supervising CLS. Testimony thus established that there were *eight years* during which
no CLS was assigned a D06 shift. There is likewise no testimony indicating that any CLS was *ever*
assigned a D06 shift outside of those eight years.

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1 When pressed with hypotheticals, Prieto acknowledged that management could conceivably order
2 someone to cover D06, but he emphasized that doing so would create other issues, including potential
3 labor-law consequences, and that it does not reflect how the lab actually operates. (Tr. 147:18–19, 150:4–
4 12.) He also testified that management lacks authority to mandate D06 coverage, that a CLS would not be
5 obligated to comply with such a directive, and that declining would not lead to discipline. (Tr. 152:23–
6 153:1, 153:20–154:14.) He described participation in D06 as entirely at the employee’s discretion. (Tr.
7 154:12–16.)

8 The payroll evidence reinforces this understanding. In Exhibit 8, each line shows the date on which
9 a particular Appellant worked a D06 shift. To take an example from the first page, in 2021, Appellant
10 Sulistiawati Widjaja worked 2 D06 shifts in January, 2 in February, 3 in March, 1 in April, 2 in May, 1 in
11 June, 7 in July, 2 in August, 2 in September, 1 in October, 3 in November, and 4 in December. (Ex. 8 at 1
12 [Tr. PDF p. 285].) Those shifts followed no pattern, i.e., they were not evenly spaced, nor were they
13 regularly worked on either Friday or Saturday evenings. (*Id.*) The shifts for other CLSs are just as irregular.
14 (See generally Ex. 8 at 1–12 [Tr. PDF pp. 285–296].)

15 The collective testimony and documentary record show that D06 shifts are optional, off-schedule
16 work. Because CLSs choose whether to work these shifts and are never required to do so as part of their
17 normal tour of duty, D06 compensation falls squarely within the category that *Alameda* and the governing
18 statutes exclude from pension calculations: payments for additional services performed outside normal
19 working hours.

20 **2. D06 shifts differ considerably from Appellants’ normal shifts.**

21 The evidence also demonstrates that D06 work operates on terms completely different from the
22 CLSs’ standard assignments.

23 First, as discussed in the preceding section, D06 shifts, unlike CLS’s regular tours of duty, are
24 *voluntary*, and no particular CLS must work them.

25 Further, a fundamental distinction is that D06 compensation is tied to tasks performed rather than
26 time. Sanchez testified that D06 provides \$10 for each test or call handled and includes no hourly rate.
27 (Tr. 61:5–7.) Prieto confirmed that the County pays a flat \$10 per lab order during weekend overnight
28 shifts, that a single order may include multiple components, and that no hourly wages apply to these shifts.

Exhibit F: Page 11

1 (Tr. 123:13–24, 123:25–126:3.) McInerny likewise clarified that unlike a differential, which adds
2 compensation to a CLS’s hourly rate for work performed during regular shifts, D06 is paid strictly per
3 task for work that occurs entirely outside regular hours. (Tr. 164:10–18, 164:21–165:7, 174:18–20, 192:8–
4 10.) Gomez elaborated on this structure, explaining that D06 entries on pay stubs reflect counts of tasks
5 performed rather than hours. The County calculates D06 earnings by taking the total number of tests
6 performed during the shift and splitting that number across the CLSs who worked that night. (Tr. 84:9–
7 85:17.)

8 Overtime treatment and leave rules also separate D06 from normal work. Prieto confirmed that
9 any work performed on a D06 shift does not count toward the accumulation of overtime hours. (Tr.
10 128:13–23.) A CLS who misses a regularly assigned shift must charge available leave, whereas a CLS
11 who does not work a D06 shift is not required to do so. (Tr. 143:16–144:3.) Consistent with this
12 understanding, Santoyo testified that if he could not report for a D06 shift, he simply notified the
13 supervisor, who would arrange coverage. (Tr. 119:12–16.) Although Santoyo initially stated that PTO
14 might be used depending on whether he had already worked 80 hours during the pay period, it became
15 clear that he was speaking only about how PTO could be used generally if he was short hours. (Tr. 116:11–
16 19, 117:20–118:3.) And when asked directly whether D06 hours contribute toward the 80-hour overtime
17 threshold, he stated that he did not know and was not aware of such treatment. (Tr. 120:9–13.) The
18 consistent point is that D06 shifts do not require the use of leave because they are not part of CLSs’ normal
19 working hours. (Tr. 142:1–3, 143:23–144:3, 145:11–15.)

20 Unlike standard shifts, D06 shifts are not part of any employee’s regular schedule. Prieto explained
21 that D06 does not align with any CLS’s standard shift assignment and is never part of the tour of duty.
22 (Tr. 124:14–19, 127:10–15, 142:1–3, 145:11–15, 156:8–10.) He also testified that working D06 is not a
23 “role responsibility” like scheduled shift coverage. (Tr. 156:11–16.) McInerny confirmed that D06 is not
24 paid for work performed during any CLS’s regular schedule. (Tr. 165:2–7.) She explained that when a
25 CLS works a regular shift and a D06 shift back-to-back, there is a clear break between them. The CLS
26 must clock out at the end of the regular shift to end hourly compensation, and only after that break does
27 the D06 shift begin and the D06 pay code apply. (Tr. 173:13–174:7.)
28

Exhibit F: Page 12

1 Further, as confirmed by Exhibit 8, CLSs did not work D06 shifts on any regular schedule. CLSs
2 worked varying numbers of D06 shifts month-to-month, and their D06 shifts, unlike regular hours, did
3 not follow any clear pattern. (See generally Ex. 8 at 1–12 [Tr. PDF pp. 285–296].)

4 Eligibility for D06 work further distinguishes it from routine assignments. Only “qualified” CLSs,
5 meaning those trained across all relevant laboratory departments, may participate in D06 coverage. (Tr.
6 41:20–23, 58:12–18.)

7 Taken together, the testimony and documentation show that D06 work is voluntary, occurs only
8 on weekend nights, is paid per test rather than by the hour, does not count toward overtime, does not
9 require leave if missed, is limited to certain cross-trained CLSs, and always occurs outside any CLS’s
10 assigned schedule. D06 shifts differ in every material respect from Appellants’ normal working hours.

11 **3. Appellants presented no evidence that D06 shifts are part of any CLS’s normal** 12 **working hours.**

13 Under SBCERA’s governing procedures, Appellants bore the burden of proving each affirmative
14 issue by a preponderance of the evidence. (1 AR-0187 [SBCERA Procedures for Disability Retirement
15 Applications and Formal Hearings apply to *Alameda* appeals]; SBCERA Procedures Rule 1, subd. (c);
16 Rule 26, subd. (a).) They therefore had to demonstrate that D06 shifts fall within a CLS’s normal working
17 hours. They presented no such evidence.

18 Nothing in the record shows that any CLS works D06 as part of a regular, assigned schedule. No
19 witness testified that a CLS is ever scheduled into a D06 shift as part of their tour of duty, and Appellants
20 introduced no schedule or policy indicating that D06 shifts form part of any CLS’s standard working
21 hours. To the contrary, the testimony established that D06 shifts are *volunteered for*, not *assigned*.

22 Sanchez never directed anyone to work D06 and worked approximately 200 such shifts only by
23 adding his name to open slots. (Tr. 54:10–20, 56:17–57:2.) Santoyo testified that weekend overnight
24 coverage is filled through monthly sign-up sheets. (Tr. 109:18–19, 110:17–25.) Prieto likewise confirmed
25 that D06 is voluntary and not a “role responsibility,” that no CLS was ever assigned to work it during his
26 tenure, and that D06 is never part of a standard shift assignment. (Tr. 124:14–22, 125:6–9, 127:10–15,
27 142:1–3, 143:5–8, 145:11–15, 156:8–10, 17–24.) Consistent with that structure, McInerney testified that
28 when a CLS works a regular shift and D06 consecutively, the employee must clock out of the regular shift

1 to end hourly compensation before the D06 shift begins. (Tr. 173:13–174:7.) And Exhibit 8 corroborates
2 that D06 was worked irregularly. (See generally Ex. 8 at 1–12 [Tr. PDF pp. 285–296].)

3 Because Appellants offered no evidence that D06 is part of any CLS’s assigned tour of duty, and
4 the record affirmatively shows the opposite, they failed to meet their burden.

5 **4. The fact that D06 shifts are only worked in-residence is irrelevant to this appeal.**

6 Appellants hint that because the 2022 decision discussed an in-residence/out-of-residence
7 distinction, and because D06 has long been paid only when a CLS is in residence, all D06 must therefore
8 be treated as compensation earnable. The contention goes nowhere. The in-residence framework is a
9 misunderstanding that belongs to the 2022 decision, not this proceeding. The Hearing Officer has already
10 confirmed on the record that he is reviewing the issue de novo and is not bound by that decision.
11 (Prehearing Conf. Tr. 37:1–9.)

12 Appellants themselves now concede the point. Their closing brief states that because no out-of-
13 residence D07 pay has been recorded since 1999, the entire “in residence” issue is “moot.” (Appellants’
14 Closing Br. 5:17-22.) That acknowledgment ends the matter. If the distinction is moot, it cannot support
15 any argument for pensionability.

16 The only question here is whether D06 is paid for work performed within CLSs’ normal working
17 hours—and as amply established by the hearing, it is not.

18 **B. The answers to the Hearing Officer’s questions confirm that D06 is paid for work**
19 **outside of Appellants’ “normal working hours.”**

20 In a prehearing conference order, the Hearing Officer instructed the parties to direct their attention
21 to several specific questions at the hearing. In its Prehearing Statement, SBCERA offered its anticipated
22 responses to those questions based on information in the administrative record. Following the conclusion
23 of the hearing, SBCERA has supplemented these answers with references to testimony elicited at the
24 hearing. The answers to the Hearing Officer’s questions confirm that Appellants received D06 in exchange
25 for volunteering to perform additional services outside of their normal working hours, and that D06 thus
26 must be excluded from compensation earnable.

Exhibit F: Page 14

1 **1. What are the expectations concerning the staffing of Night Standby?**

2 **From the administrative record:** D06 shifts are staffed only on Friday and Saturday nights from
3 11:30 p.m. to 7:30 a.m. (Ex. 2 at p. 12; 5 AR-1333). At least one CLS is expected to remain on-site in the
4 laboratory. Other CLSs do not stay on-site unless called-in. (*Id.*) These shifts do not correspond to any
5 regularly scheduled CLS shift. (5 AR-1332.) D06 shifts are typically filled on a voluntary basis by eligible
6 CLSs, although eligible CLSs may be assigned by a supervisor to fill D06 shifts for which there are no
7 volunteers.

8 **From the hearing:** D06 shifts are staffed only on Friday and Saturday nights from 11:30 p.m. to
9 7:30 a.m. (Tr. 36:21–37:1, 123:10–15.) Each shift is covered by three CLSs. (Tr. 37:2–3.) Since 1999, no
10 CLS has remained on call at home for these shifts. (Tr. 26:27–3.) D06 does not correspond to any CLS’s
11 regularly scheduled shift. (Tr. 127:10–15.) Instead, staffing is handled by circulating a spreadsheet among
12 qualified CLSs, who sign up for whichever weekend overnight shifts they are available to work. If
13 someone is unavailable for a given Friday or Saturday, the supervisor simply moves to the next qualified
14 CLS. (Tr. 41:13–42:6, 44:24–45:6, 46:1–47:2, 55:12–21, 58:12–18.)

15 **a) What are management expectations regarding Clinical Laboratory Scientists** 16 **working Night Standby?**

17 **From the administrative record:** CLSs working D06 shifts are responsible for performing lab
18 tests in response to patient orders. Tests are performed across multiple departments, including Chemistry,
19 Blood Bank, Hematology, Urinalysis, Coagulation, and Microbiology. Each CLS has a primary
20 departmental responsibility but is expected to perform and release tests across other departments as
21 needed. The total number of test orders completed during the shift is divided evenly among the CLSs
22 working that shift. (5 AR-1333–1334.)

23 **From the hearing:** CLSs are expected to process lab tests, also called “exam orders” or “calls.”
24 A single “call” or “exam order” can consist of a single test or multiple tests. (Tr. 123:10–21.) Only
25 qualified CLSs, meaning those trained across all relevant laboratory departments, may participate in D06
26 coverage. (Tr. 41:20–23, 58:12–18.)

Exhibit F: Page 15

1 **b) Is Night Standby defined as a mandatory “work shift” or assignment by the**
2 **County?**

3 **From the administrative record:** No. D06 does not correspond to a regularly scheduled shift for
4 CLS employees. (5 AR-1332.) Rather, it is primarily filled on a voluntary basis by eligible CLSs.

5 **From the hearing:** No. D06 is not a mandatory work shift or assignment. CLSs take D06 shifts
6 only by voluntarily signing up for available weekend-overnight slots. (Tr. 124:20–22, 125:6–9.) D06 shifts
7 are never part of any CLS’s standard schedule, do not align with assigned tours of duty, and are always
8 worked outside regular hours. (Tr. 124:14–19, 127:10–15, 142:1–3, 145:11–15, 156:8–10, 165:2–7.)
9 During Sanchez’s four years as supervising CLS, and during Prieto’s four years—a different four years—
10 managing the ARMC lab, no CLS was ever assigned to work a D06 shift. (Tr. 56:17–57:2; 143:5–8,
11 156:17–24.) Appellants presented no evidence that any CLS was ever assigned to work a D06 shift.

12 **c) If Night Standby is a work shift, is there any other wage or compensation for**
13 **primary (first) Clinical Laboratory Scientist other than \$10 per test conducted?**

14 **From the administrative record:** No. The on-site CLS receives only \$10 per test performed.
15 They do not receive hourly pay, a stipend, or any other compensation during the D06 shift. (Ex. 2 at p. 12;
16 5 AR-1333–1335.) Even if a D06 shift falls on a holiday, the CLS working that shift does not receive
17 holiday pay in connection with that D06 shift.

18 **From the hearing:** No. The on-site CLS receives only the flat \$10-per-call/test payment. There is
19 no hourly rate, stipend, premium, or other add-on compensation of any kind for D06 work. (Tr. 61:5–7,
20 123:13–24, 123:25–126:3.) Employees are paid by totaling the number of tests performed during the shift
21 and dividing them equally among CLSs who worked that shift. (Tr. 85:11–17.)

22 **2. Is it required or mandatory that all Clinical Laboratory Scientists work Night Standby,**
23 **excepting those assigned to work the 11:30 p.m. to 7:30 a.m. shift?**

24 **From the administrative record:** No. County HR has stated that D06 is not a regularly scheduled
25 shift. (5 AR-1332.) No employees are “assigned” a D06 shift on any regular basis. (Ex. 2 at p. 12.) Certain
26 CLSs do not work any D06 shifts, and certain CLSs are not even eligible to work D06 shifts for want of
27 certain professional training.
28

Exhibit F: Page 16

1 **From the hearing:** No. No CLS is ever required to work a D06 shift. The shifts are strictly
2 voluntary and available only to CLSs who are qualified to perform the necessary cross-department testing.
3 Some CLSs never work D06 shifts at all. (Tr. 41:20–23, 58:12–18, 124:20–22, 125:6–9.)

4 **a) Are there Clinical Laboratory Scientists that do not work the Night Standby,
5 excepting those assigned to work the 11:30 p.m. to 7:30 a.m. shift?**

6 **From the administrative record:** Yes. Because D06 shifts are not assigned as part of CLSs
7 normal working hours, there *are* CLSs who do *not* work D06 shifts.

8 **From the hearing:** Yes. Several CLSs never work D06 shifts because the shifts are voluntary and
9 are available only to those who are cross-trained to perform the required testing. CLSs who are unqualified
10 or who choose not to volunteer do not work D06 shifts. (Tr. 41:20–23, 58:12–18, 124:20–22, 125:6–9.)

11 **3. Is there a standard “rotation” of Clinical Laboratory Scientists for Night Standby?**

12 **From the administrative record:** No. There is not a standard rotation of D06 shifts. Instead, D06
13 shifts are filled on a month-to-month basis from pool of CLSs who are eligible to work D06 shifts.

14 **From the hearing:** There is no rotation. A supervising CLS circulates a spreadsheet each month,
15 and qualified CLSs sign up for whichever Friday or Saturday overnight shifts they can work. If someone
16 is unavailable for a particular date, the supervisor moves to the next qualified person. This availability-
17 driven sign-up process is the primary method for establishing the schedule. (Tr. 41:13–42:6, 44:24–45:6,
18 46:1–47:2, 55:12–21, 55:22–25, 58:12–18.) Exhibit 8, which shows days on which Appellants worked
19 D06 shifts between October 2020 and October 2023, confirms that there was no regular rotation. (See
20 generally Ex. 8 at 1–12 [Tr. PDF pp. 285–296].)

21 **a) How is the rotation established, and by whom?**

22 **From the administrative record:** Again, there is no standard rotation of D06 shifts, but a
23 supervising CLS manages the monthly schedule for D06 shifts.

24 **From the hearing:** There is no standard rotation. The schedule is established via voluntary sign-
25 ups. (Tr. 41:13–42:6, 44:24–45:6, 46:1–47:2, 55:12–21, 55:22–25, 58:12–18.)
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Exhibit F: Page 17

1 **b) Do Clinical Laboratory Scientists voluntarily “sign up” for Night Standby, or**
2 **are they assigned?**

3 **From the administrative record:** D06 shifts are primarily filled voluntarily but can be assigned
4 on an as-needed basis. Such assignments, however, are ad hoc, and do not form part of any CLS’s regular
5 schedule or normal working hours.

6 **From the hearing:** CLSs volunteer for D06 shifts. D06 shifts are filled through the sign-up
7 spreadsheet described above, and no CLS is required to take a D06 shift. If open slots remain, the
8 supervisor may *ask* additional CLSs if they are willing to cover them, but no one is compelled to work
9 D06, and assignments are never part of any CLS’s tour of duty. (Tr. 47:3–8, 56:17–57:2, 145:11–15,
10 152:23–153:1, 153:20–154:12–16, 156:8–10, 165:2–7.)

11 **c) Is there any enforcement of a Night Standby rotation to ensure coverage?**

12 **From the administrative record:** Yes. As noted in the previous response, D06 shifts are typically
13 filled on a voluntary basis, but can be assigned if not filled by volunteers.

14 **From the hearing:** No. Management has no authority to assign D06, employees may decline any
15 request to work a D06 shift, and refusal cannot result in discipline. (Tr. 152:23–153:1, 153:20–154:14.)
16 Availability for D06 is voluntary and at the employee’s discretion. (Tr. 154:12–16.) However, it is nearly
17 unheard of that a D06 shift cannot be filled. (Tr. 112:5–10, 113:7–11.)

18 **d) If so, how is the Night Standby rotation enforced?**

19 **From the administrative record:** In the event that all D06 shifts are not all filled by volunteers,
20 the supervising CLS may assign an eligible CLS to fill it.

21 **From the hearing:** D06 shifts are not enforced because they are not mandatory. (Tr. 152:23–
22 153:1, 153:20–154:12–16.) There is no instance—documented or recalled by any witness—of any CLS
23 ever being assigned to work a D06 shift.

24 **e) Are Clinical Laboratory Scientist managers, supervisors or FLSA exempted**
25 **employees treated in the same manner as other Clinical Laboratory Scientists in**
26 **regard to any Night Standby rotation?**

27 **From the administrative record:** No. CLS supervisors, managers, and FLSA exempted
28 employees are not eligible to work D06 shifts.

Exhibit F: Page 18

1 **From the hearing:** No. Supervisors, managers, and exempt employees do not participate in D06
2 sign-ups and do not work D06 shifts at all. (Tr. 56:8–21.)

3 **f) What does it mean to be “in residence” at the medical center?**

4 **From the administrative record:** An “in residence” CLS works on site at the clinical laboratory.

5 **From the hearing:** A CLS “in residence” works on site at the clinical laboratory rather than on
6 call at home. (Tr. 25:17–20, 26:19–27:3.)

7 **g) Has this practice changed? If so, how?**

8 **From the administrative record:** It has not. SBCERA, moreover, notes that whether a CLS works
9 a D06 shift “in residence” or “on call” has no bearing on the question at issue here: whether D06 shifts of
10 any kind are included in CLSs’ normal working hours. As discussed throughout this pre-hearing statement
11 and as the evidence will show at the hearing, they are not.

12 **From the hearing:** Yes. All work is now in residence. The practice of having a CLS on call at
13 home stopped in 1999. (Tr. 26:19–27:3, 177:1–3.)

14 **h) Does the “D” in D06 stand for “differential”? If so, is there any other reference
15 to the differential in County records or the MOU besides MOU Section 4?**

16 **From the administrative record:** Yes, “D” stands for “differential.” However, the Board
17 determines the includability or excludability of particular pay codes for compensation earnable based on
18 the *work associated* with those pay codes, not with the *label* assigned to those pay codes. As explained
19 above, D06 is not paid as a differential, i.e., as a premium or incentive added to hourly wages. Instead, it
20 is paid to CLSs on a \$10 per test basis. The County does not pay any other “differential” in this fashion.
21 Indeed, D06 is set apart from other differentials in the MOU. (Ex. 2 at p. 12.)

22 **From the hearing:** Yes, “D” stands for “differential.” (E.g., Tr. 29:2–30:2, 166:22–24.) However,
23 after making inquiries of the County in attempting to implement the 2022 decision, SBCERA learned that
24 D06 was not a differential in the traditional sense of extra amounts provided “on top” of base pay to
25 compensate employees for skills or services they provide during *their normal working hours*, but instead
26 is a standalone pay item for work performed on specific *additional* shifts they may work. (Tr. 164:5–7.)

Exhibit F: Page 19

1 **i) Is the only pay for the first Clinical Laboratory Scientist on Night Standby \$10**
2 **per test?**

3 **From the administrative record:** Yes. The first CLS receives \$10 per test performed during the
4 D06 shift. (Ex. 2 at p. 12; 5 AR-1335.)

5 **From the hearing:** Yes. D06 shifts are only paid as a flat \$10-per-call/test. There is no hourly
6 rate, stipend, premium, or other add-on compensation of any kind for D06 work. (Tr. 61:5–7, 123:13–24,
7 123:25–126:3.)

8 **j) Do the first Clinical Laboratory Scientists on Night Standby receive any other**
9 **hourly pay, compensation, stipend, etc.?**

10 **From the administrative record:** No. County HR confirmed that CLS employees working D06
11 shifts “are only paid \$10 per call” and are not paid an hourly wage during those shifts. (5 AR-1335.)

12 **From the hearing:** No. There is no hourly rate, stipend, premium, or other add-on compensation
13 of any kind for D06 work. (Tr. 61:5–7, 123:13–24, 123:25–126:3.)

14 **k) Is it possible for the first Clinical Laboratory Scientist to be on standby and**
15 **receive no compensation at all if no tests are actually conducted?**

16 **From the administrative record:** Yes. Because pay is strictly tied to the number of tests
17 performed, an on-site CLS would receive no compensation if no test orders were received during the D06
18 shift. (Ex. 2 at p. 12; 5 AR-1335.)

19 **From the hearing:** Yes. Because D06 compensation consists solely of the \$10-per-order payment,
20 a CLS could receive no pay if no test orders were received during the shift. (Tr. 123:17–124:10.) In
21 practice, however, Sanchez testified he never saw fewer than 75 calls during a D06 shift. (Tr. 38:4–7.)

22 **IV. CONCLUSION**

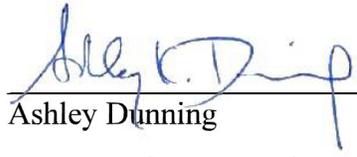
23 The hearing record confirms that D06 is paid for additional services rendered outside of normal
24 working hours. D06 is not part of any CLS’s assigned schedule and is never paid for work performed
25 during regular assigned hours. It is optional, off-schedule, per-test compensation for extra work performed
26 on weekend graveyard shifts. CERL requires SBCERA to exclude from compensation earnable all
27 payments for services rendered outside of normal working hours, and the record shows that D06 must be
28 excluded on this basis.

Exhibit F: Page 20

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NOSSAMAN LLP

DATED: December 9, 2025

By:  _____
Ashley Dunning

Attorneys for Respondent SAN BERNARDINO
COUNTY EMPLOYEES' RETIREMENT
ASSOCIATION

DECLARATION OF SERVICE

I am more than 18 years old and not a party to this action. My business address is Nossaman LLP, 50 California Street, Suite 3400, San Francisco, California 94111. On December 9, 2025, I caused to be served the following document(s):

RESPONDENT SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION'S PRE-HEARING STATEMENT

on the interested parties in this action by transmitting a true pdf copy of the foregoing document(s) by e-mail transmission from rivera@nossaman.com to the interested parties only as indicated on the below service list at the e-mail addresses set forth on said service list. Said transmission(s) were completed on the aforesaid date at the time stated on declarant's e-mail transmission record. Each such transmission was reported as complete and without error.

**San Bernardino County Employees' Retirement Association
348 W. Hospitality Lane, Suite 100
San Bernardino, CA 92408**

Email: BORLegalServices@SBCERA.org

I declare under penalty of perjury that the above is true and correct. Executed on December 9, 2025, at San Francisco, California.

Rica Rivera

Rica Rivera

Exhibit F: Page 22

PROOF OF SERVICE

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I am employed in the County of San Bernardino, State of California. I am over 18 years of age and not a party to this action. My business address is 348 W. Hospitality Lane, Suite 100, San Bernardino, California 92408.

My electronic service address is: BORLegalServices@sbcera.org

On December 9, 2025, I served the following document(s) entitled:

**RESPONDENT SAN BERNARDINO COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION'S POST-HEARING STATEMENT
Dated December 9, 2025**

on the person or persons described below

By placing the original **a true digital copy** of the documents listed above to be sent via electronic mail and addressed as follows:

Name/Address	Email	Party
Duane E. Bennett, Esq. P.O. Box 942 Poway, CA 92074	debennettlaw@gmail.com	Assigned Hearing Officer
David Vasquez, Esq. 301 E. Vanderbilt Way, Suite 420 San Bernardino, CA 92408	dvasquez@vasquezesq.com	Attorney for Appellants

The document(s) were served by the following means:

(VIA E-MAIL OR ELECTRONIC TRANSMISSION). I caused such document(s) to be transmitted electronically via e-mail to the e-mail address shown. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on the _____ day of December 2025 at San Bernardino, California.

YOLANDA BULLOCK