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8 **SAN BERNARDINO COUNTY EMPLOYEES' RETIRMENT ASSOCIATION**  
9 **BOARD OF RETIREMENT**

10 IN THE MATTER OF: *ALAMEDA*  
11 ADMINISTRATIVE APPEAL OF))  
12 CLINICAL LABORATORY  
13 SCIENTISTS (FORMERLY KNOWN  
14 AS PROFESSIONAL LAB  
15 TECHNICIANS)

16 **APPELLANT'S CLOSING**  
17 **STATEMENT**

18 *Assigned to: Duane E. Bennett*

19 **I. INTRODUCTION**

20 Appellants are understandably disheartened by having to go through a second appeal  
21 process when the first appeal resulted in a favorable result to Appellants. However, the Board  
22 decided to send the matter back to get further clarification. The 2022 Decision tasked SBCERA  
23 staff with including only "in-residence" D06 pay as compensation earnable. SBCERA staff  
24 quickly determined that "out-of-residence" D06 pay had not occurred since 1999 and therefore it  
25 should have been a moot issue. (Exhibit – 1). The 2022 Decision further concluded that there  
26 was substantial evidence that "in-residence" D06 was a differential and should be considered  
27 compensation earnable. Nonetheless, SBCERA staff has moved forward with the instant matter  
28 contesting that D06 is not a differential and reasserting its argument that D06 is outside of

1 normally scheduled or regular working hours. During the hearing, substantial testimony was  
2 provided that D06 shifts were normally scheduled and part of the Techs normal working hours.

3 **II. LAW AND ARGUMENT**

4 **A. NORMAL WORKING HOURS**

5 The primary focus of the current hearing was on whether or not the D06 shifts were  
6 working during normal or regularly scheduled working hours. Unfortunately, neither PEPR  
7 nor *Alameda* provides clear guidance on making this determination. *Alameda* does nibble  
8 around the edges.

9 [T]he calculation required by section 31461 assumes that all employees have  
10 worked the same number of days — that is, "the average number of days  
11 ordinarily worked by persons in the same grade or class of positions during the  
12 period" — and excludes overtime pay earned outside of "normally scheduled or  
13 regular working hours." (§§ 31461, subd. (a), 31461.6, subd. (a).)  
*Alameda Cnty. Deputy Sheriff's Ass'n v. Alameda Cnty. Employees' Ret. Ass'n*  
(2020) 9 Cal.5th 1032.

14 [S]ection 31461.6, ... excludes "overtime premium pay" unless the pay is  
15 received as compensation "for hours worked within the normally scheduled or  
16 regular working hours that are in excess of the statutory maximum workweek."  
17 (*Id.*, subd. (a).) In other words, overtime pay is not excluded if it is earned by an  
18 employee as part of his or her "normally scheduled or regular working hours."  
19 (*Ibid.*) Only payment for excess hours, as compared to the employee's peers, is  
20 excluded.  
*Alameda Cnty. Deputy Sheriff's Ass'n v. Alameda Cnty. Employees' Ret. Ass'n*  
(2020) [FN 32] 9 Cal.5th 1032.

21 While not directly addressing the current situation, Alameda does tell us that overtime or  
22 working past the overtime threshold is not determinative of whether or not work is outside of  
23 normal or regularly scheduled working hours. Here, we heard a great deal of testimony on  
24 factors that will ultimately determine whether or not D06 was earned outside of normally  
25 scheduled or regular working hours.

26 D06 Pay

27 The real villain in this story is the D06 pay system itself. This is a system without parallel  
28 in any party's experience. This system could result in a Tech working 8 hours and receiving \$0  
pay. Respondent contends that despite the 2022 Decision, D06 is a type of overtime and

1 therefore not compensation earnable. Appellants have provided undisputed testimony that the  
2 second shift (3-11) and the third shift (11-7 Sun-Thurs) receive differentials that are considered  
3 compensation earnable. Yet, according to Respondent, the additional pay for undesirable work  
4 for the third shift on Fridays and Saturdays is not a differential but a type of overtime or  
5 otherwise not a differential. Testimony established that the only difference between D06 shifts  
6 and other graveyard shifts was the manner of pay and scheduling.

7 **Scheduling D06 Shifts:**

8 Mandatory or Voluntary Shifts:

9 Respondent contends that the D06 Shifts were voluntary and therefore not part of  
10 normally scheduled or regular working hours. Appellant contends that while Techs had the  
11 ability to provide input into when they would prefer to have their D06 shifts scheduled, the shifts  
12 themselves were mandatory. Testimony established that Techs were able to provide input as to  
13 their preferences with regard to both D06 and all other shifts. (Exhibit – 2).

14 Testimony was provided that D06 shifts were staffed through a system where eligible  
15 Techs signed up for required D06 shifts. Testimony was provided that Techs had input into how  
16 the non-D06 shifts were staffed. (Exhibit – 2).

17 Respondent presented testimony from ARMC Manager Chris Prieto, possibly the nicest  
18 manager in the county, who testified that neither he nor the County would force Techs to work  
19 D06 shifts. The County HR Department evidently is not so nice, and Respondent acknowledges  
20 in their opening brief that the County will assign Techs to the D06 shifts if there is insufficient  
21 coverage. “D06 shifts are typically filled on a voluntary basis by eligible CLSs, although eligible  
22 CLSs may be assigned by a supervisor to fill D06 shifts for which there are no volunteers.” (R.  
23 P.H. Stmt. P. 13 ll. 23-24). The 2024-2028 MOU provides clear authority for what Mr. Prieto  
24 says he or the County can’t do.

25 The appointing authority shall establish work schedules, including  
26 determining the number of hours that comprises a scheduled shift and the number  
27 of hours in a pay period, for each position. The appointing authority may modify  
28 or change work schedules and the number of hours in a shift to meet the needs of  
service upon reasonable notice to the employee. (Respondent’s Exhibit 3, p.  
000358).

## Exhibit E: Page 4

1 This is a situation where, because of the Techs' understanding the scheduling  
2 requirements of their job, D06 shifts are viewed part of their responsibilities and there is almost  
3 never a gap in coverage for the shifts. Testimony established that there is a long-standing  
4 practice of the Techs working with management to ensure that the D06 shifts are covered.  
5 (Exhibit – 4). Based on the testimony provided, it is clear that the County could simply assign  
6 the D06 shifts as they do all other shifts. (Exhibit – 5). If that were the case, it would seem that  
7 the D06 shifts would clearly be mandatory assignments as all other Lab Tech shifts are.  
8 Appellants contend that the Techs volunteered their availability for specific shifts but for the  
9 class (qualified Techs), the shift assignments were mandatory.

10 To the extent that the D06 shifts are staffed primarily by Techs signing up for required  
11 shifts, this seems to have little to do with whether or not they are within regular working hours or  
12 normally scheduled shifts. Uncontroverted testimony was provided that established that both  
13 D06 shifts and non-D06 shifts are scheduled at least a month in advance. Testimony further  
14 established that the Techs have a schedule that varies on a regular basis due to the necessity of  
15 staffing the lab 24/7. (Exhibit – 6).

### 80-hour pay period:

16 Respondent next moves to the argument that because working D06 shifts result in Techs  
17 working over 80 hours in a pay period, they must be outside of normal working hours. However,  
18 uncontroverted testimony established that the lab has insufficient staffing to cover all shifts  
19 required by the facility with qualified Techs working only 80 hours per pay period. (Exhibit –  
20 7). Despite that, Respondent contends D06 shifts are outside normal working hours. Testimony  
21 established that there are other classifications whose compensation earnable includes hours in  
22 excess of 80 per pay period, yet this does not apply to Appellants for some reason. (Exhibit – 8).  
23 As a class, Techs must work over 80 hours per pay period to cover all required lab shifts.

### PTO:

24 Respondent introduced testimony that an employee scheduled for a D06 shift that called  
25 off does not use PTO to cover that shift and argues that this establishes that D06 shifts were not  
26 part of normally scheduled or regular working hours. Appellants argue that the lack of PTO use  
27  
28

1 is more a result of the bizarre D06 pay scheme than any intentional indication of a determination  
2 of normally scheduled or regular working hours. However, this raises the question of how that  
3 would work. D06 shifts are paid by the call. Would the Tech using PTO get the average number  
4 of calls paid for the year or month? Would the Tech get paid PTO for the actual number of tests  
5 performed on the missed shift? How would this be applied to the PTO balance? In mathematics  
6 there is a concept where when you try to divide by zero the result is undefined. It seems like  
7 that's what we have here. As a practical matter, the PTO question did not come up because it  
8 was unanswerable.

9 Differential:

10 We heard uncontroverted testimony that 2<sup>nd</sup> shifts (3pm to 11pm) received a differential  
11 and that non-D06 graveyard shifts (11pm to 7am Sun-Thurs) received a differential. We heard  
12 further testimony that D06 pay was an incentive to work an undesirable shift. (Exhibit – 9). Yet  
13 Respondent argues that D06 is not a differential but rather a species of overtime. It's not clear  
14 how this is a matter that requires further clarification as the 2022 Decision clearly concluded that  
15 D06 was a differential. Nonetheless, testimony in this hearing has again supported the finding  
16 that D06 is a differential.

17 In Residence:

18 It is undisputed that D06 pay has been only for “in residence” since 1999. Testimony  
19 established that Techs who were not in residence were paid D07 for standby and D08 for call  
20 back. Further testimony established that no D07 pay had been recorded since 1999. (Exhibit –  
21 10). There has been no testimony that pay earned in 1999 or before has any bearing on the issue  
22 before us. Therefore, Appellants argue that the “in residence” issue is moot.

23 **III. CONCLUSION**

24 Appellants did not create the D06 system and there has been no evidence provided to  
25 suggest that the D06 shifts are some type of spiking prohibited by PEPRA. D06 shifts are some  
26 type of weird remanent of a situation that arose in the 1970s that simply does not exist today.  
27 D06 shifts are regularly scheduled, and Techs are required to work those shifts. D06 shifts were  
28

**Exhibit E: Page 6**

1 treated as compensation earnable prior to PEPRA and were determined to be compensation  
2 earnable by the 2022 Decision. The only fundamental difference between D06 shifts and other  
3 graveyard Lab Tech shifts is the manner of payment. The ambiguity of the D06 pay system  
4 should not be used to deny current and future retirees benefits they have earned. Appellants  
5 specifically request that the Hearing Officer find that 1) D06 shifts were part of normal and/or  
6 regularly scheduled working hours, 2) No determination of in-residence or out-of-residence  
7 needs to be made with regard to D06 Shifts for the purpose of implanting this decision, and 3)  
8 the status quo (prior to SBCERA’s post Alameda change) with regard to calculating D06 as  
9 compensation earnable be restored.

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Date: November 12, 2025

LAW OFFICE OF DAVID VASQUEZ, APC

David Vasquez

David Vasquez, Esq.

Attorney for APPELLANTS

**EXHIBIT - 1**

1 A. That's correct.

2 Q. And if they were called in and actually began  
3 performing calls or tests, they received a D08 pay; is  
4 that correct?

5 A. That's correct.

6 Q. Let's get some terminology correct because this  
7 was confusing to me.

8 The techs receiving D06 pay received \$10 per  
9 call; is that correct?

10 A. That is correct.

11 Q. And can a call be multiple tests?

12 A. Yes.

13 Q. So is a call a one or more tests per patient?

14 A. That's more accurate. It's a set of tests for  
15 one particular patient.

16 Q. Okay. And so each request is considered a  
17 call; is that correct?

18 A. Yes.

19 Q. All right. Now, I believe you testified that  
20 the hospital moved to the Arrowhead facility in 1999.

21 Is that correct?

22 A. That's correct.

23 Q. Since 1999 have any techs been on call at home  
24 for purposes of covering the call shift?

25 A. No.

## Exhibit E: Page 9

1 Q. Okay. So that's a practice that stopped in  
2 1999; is that correct?

3 A. Around that time, yes.

4 Q. Okay. And what I'd like to do now is talk a  
5 little bit about how the shifts at the lab work. And,  
6 first of all, I want to ask you some general questions  
7 about the lab.

8 Does the lab have multiple departments?

9 A. Yes.

10 Q. What departments are -- comprise the lab?

11 A. Blood bank, hematology, coagulation,  
12 urinalysis, chemistry, microbiology, serology. That's  
13 to name a few. There's pathology, but the laboratory  
14 techs don't work in that department. But it is a  
15 department in the laboratory.

16 Q. Okay. What departments do laboratory techs  
17 work in?

18 A. The blood bank, chemistry, hematology,  
19 coagulation, urinalysis, chemistry, and microbiology.

20 Q. And what I want to do in order to expedite  
21 things is let's talk about the lab structure at  
22 Arrowhead, so 1999 and after. What I want to do is walk  
23 over to my chart here. And what I've done is these are  
24 intended to represent days of the week. Saturday,  
25 Sunday, Monday, Tuesday, Wednesday, Thursday, Friday,

Page 27

**EXHIBIT - 2**

1 Q. Okay. So is there any input received from the  
2 employees when making a schedule on non-D06 shifts?

3 A. Yes.

4 Q. Okay. How is that input received?

5 A. It is my understanding that each schedule is  
6 open, and staff will sign up for their shifts.

7 Q. Okay. So they volunteer for certain shifts on  
8 the regular shifts as well?

9 A. It's not as much volunteering. But, for  
10 instance, we have an electronic scheduling system, and  
11 some put their schedule in and it's preset. So it's set  
12 Monday through Friday or certain days. And then those  
13 that are not in the system would still have to have the  
14 schedule made. We call it that the schedule is made or  
15 it's complete. So it's the supervisor that makes sure  
16 that all the schedules forward-looking are complete so  
17 the schedule can then be made.

18 Q. So if I understand your testimony correctly,  
19 the employee does have some input in terms of expressing  
20 their preference for certain shifts?

21 A. They have the ability to express that, yes.

22 Q. Okay. Now, in terms of the D06 shifts where  
23 the employees, as you say, volunteer for it, what if no  
24 one volunteered? What would happen?

25 A. It is my understanding at the time I oversaw

**EXHIBIT - 3**

1 spreadsheet; correct?

2 A. Correct.

3 Q. And then the spreadsheet was made available to  
4 the techs -- the qualified techs who would indicate  
5 their availability; correct?

6 A. Correct.

7 Q. Was there ever a time where there weren't  
8 enough techs signed up for the call shifts?

9 A. Yes.

10 Q. What did you do in that circumstance?

11 A. We had to assign techs to work.

12 Q. Okay.

13 THE HEARING OFFICER: Can I take the witness on  
14 voir dire real quick. Mr. Vasquez, just one second.

15

16 VOIR DIRE EXAMINATION

17 **BY THE HEARING OFFICER:**

18 Q. Just to go over that one time, Mr. Sanchez,  
19 you're saying as management there would be CLSs that  
20 were identified and qualified to work the shift;  
21 correct?

22 A. Correct.

23 Q. Okay. And the protocol was to go -- what would  
24 the protocol be? To circulate this assignment -- this  
25 assignment or this spreadsheet?

1           A.    The spreadsheet. A supervisor was usually  
2 assigned to take the spreadsheet with the techs' names  
3 on it and go through the first tech because -- okay.  
4 The very first time we did it, we put everybody's name  
5 in a hat, pulled it out, put it on a spreadsheet, so it  
6 was random.

7           Then we went to the first tech and showed the  
8 schedule and then, you know, was there a day here that  
9 you could work because we wanted to make sure it was  
10 available because ultimately if they didn't sign up, we  
11 were going to have to assign them. So we gave them the  
12 option to sign up if they could.

13          Q.    What do you mean? Can you walk me through  
14 exactly what does that mean. You said you gave them the  
15 option to sign up.

16          Did you take the spreadsheet to the CLSs and  
17 say, "Okay. Here's the spreadsheet. This is when you  
18 are assigned or" --

19          A.    No. We had the dates. So we would look at the  
20 calendar and for the month before and say -- and at this  
21 time we were staffed Sunday through Thursday. So now  
22 only Friday and Saturday graves had to be staffed. They  
23 would look at it and, you know, if their schedule  
24 allowed it, they would say, Hey, I'll sign up for the  
25 second Friday. We would put their name with the date.

## Exhibit E: Page 15

1 Then we would go to another technologist with the second  
2 one until we got the weekend shifts covered.

3 If the occasion -- more to your point, if we  
4 didn't -- if there was not enough people to sign up for  
5 them, then as management we'd had to assign techs to  
6 work, and it was the next person down the line that they  
7 would be required to work that shift because somebody  
8 had to work it.

9 Q. Who establishes the order of the spreadsheet?

10 A. It was random pulling names out of a hat just  
11 to make it fair to who was going to be, you know, asked  
12 as to their availability.

13 Q. If you assigned one of the CLSs and they  
14 didn't -- and they said, "I don't want to do it. I'm  
15 not coming," what would happen?

16 A. Well, as the MOU gives us the authority as the  
17 appointing authority to assign shifts -- and I never had  
18 that happen -- all the technologists were -- understood  
19 that someone had to work the shift, and thankfully I  
20 never had to. Well, I did assign the tech, but I never  
21 had the occasion where a tech did not comply with my  
22 requests.

23 THE HEARING OFFICER: Okay, Mr. Vasquez.

24 MR. VASQUEZ: Sure.

25 / / /

**EXHIBIT - 4**

1 Q. And, to your understanding, is there a standard  
2 rotation of D06 shifts, like a particular clinical  
3 laboratory scientist works the first and third Friday,  
4 the second one works the first and third Saturday, so on  
5 and so forth?

6 A. It's my understanding, because the pool of  
7 clinical labs scientists that are trained to do those  
8 tests volunteer, that they self-coordinate to avoid any  
9 gaps in coverage.

10 Q. And do managers or supervisors work D06 shifts?

11 A. No.

12 Q. And would -- to your understanding, would a  
13 clinical laboratory scientist need to use any paid time  
14 off if he or she were unable to work a D06 shift?

15 A. No.

16 Q. And is it a requirement that all clinical  
17 laboratory scientists work at least some D06 shifts?

18 A. No.

19 Q. To your understanding, are there any clinical  
20 laboratory scientists who don't work any D06 shifts?

21 A. I believe there are. For instance, those that  
22 have not been trained to perform the tests. But upon  
23 training, they could volunteer.

24 Q. And are the clinical laboratory scientists who  
25 work D06 shifts, are they on site at ARMC?

**EXHIBIT - 5**

1 a clinical laboratory scientist need to use paid time  
2 off to be excused from working that D06 shift?

3 A. No.

4 MR. WESTERFIELD: Let's just briefly have a  
5 minute.

6 (A discussion was held between Mr. Westerfield  
7 and Ms. Dunning outside the hearing of the reporter.)

8 MR. WESTERFIELD: We don't have any further  
9 questions.

10 THE HEARING OFFICER: Okay. Recross?

11 MR. VASQUEZ: Yes.

12

13 RECCROSS-EXAMINATION

14 BY MR. VASQUEZ:

15 Q. Almost done, Mr. Prieto.

16 Is there anything that prohibits management  
17 from simply assigning D06 shifts the same way they  
18 assign every other shift?

19 A. No.

20 Q. Are there sufficient full-time equivalent  
21 employees assigned to the lab to cover all required  
22 shifts without some techs working over 80 hours per pay  
23 period?

24 A. Historically when there would be a need to  
25 supplement staff, it would be through registry, bringing

**EXHIBIT - 6**

1           A.     Correct.

2           Q.     Who determined the techs' schedule for those  
3 shifts? I'm talking about the morning and afternoon  
4 shifts during the full week.

5           A.     The department's supervisors.

6           Q.     Okay. Did the techs have any availability to  
7 request certain days off?

8           A.     Yes.

9           Q.     Okay. And if you had -- if all the techs  
10 wanted the weekend off, how was it determined who got  
11 the weekend off?

12          A.     They all understood they were hired on rotating  
13 shifts and that included holidays and weekends, and so  
14 they -- they all knew they had to work a certain number  
15 of weekends. That was their understanding.

16          Q.     Was there any ability to request a specific  
17 schedule?

18          A.     Yes.

19          Q.     And if you have everyone requesting 7:30 to  
20 3:30, how would you determine who got that shift and  
21 then who was assigned to that afternoon and graveyard  
22 shift?

23          A.     Well, we would just have a sit-down and have a  
24 discussion to -- somebody had to give up, you know, that  
25 request.

1 Q. Okay. And how frequently did a tech's schedule  
2 change? Let's just go to your last year there.

3 A. How often did it change?

4 Q. Yeah.

5 A. You mean from day to day or shift to shift?

6 Q. No. So let's -- let me be more clear.

7 A. Okay.

8 Q. So you got a tech starting in January 2015 that  
9 was scheduled for Monday through Friday morning shifts,  
10 7:30 to 3:30.

11 A. Okay.

12 Q. How frequently could that tech expect their  
13 schedule to change?

14 A. Depending on the staffing of the department,  
15 they usually had to work, like, every third weekend,  
16 every fourth weekend.

17 Q. Okay.

18 A. So it would change in that respect.

19 Q. So it would likely change monthly?

20 A. Yes. Yes. Yes.

21 Q. So they wouldn't be on that schedule for a full  
22 year?

23 A. No.

24 Q. Okay. So the average tech's schedule would  
25 change in terms of days worked and days off on a monthly

**EXHIBIT - 7**

1           -- it would be 80 hours?

2           So as it stands now, without hiring anyone in  
3 from the registry or a consultant, some techs are going  
4 to have to work over 80 hours per pay period to cover  
5 the D06 shifts?

6           A.    Because the D06 shifts don't add hours, they  
7 would complete their 80 hours and then begin the  
8 compensation through testing.

9           Q.    Sure.  And I'm going one level before that,  
10 before we talk about the coding.  Just the actual number  
11 of hours worked.  Not what the hours are paid at.

12                  Because the D06 shifts are eight-hour shifts;  
13 correct?

14           A.    Correct.

15           Q.    There's someone there for the full eight hours  
16 of a shift?  There are three people there on each shift;  
17 correct?

18           A.    Correct.

19           Q.    So because the staffing levels require the D06  
20 shifts which aren't part of the -- what you term regular  
21 scheduled shift or scheduled shifts, by definition,  
22 then, the average full-time employee -- full-time tech  
23 is going to work more than 80 hours per pay period?  Not  
24 being paid for, regardless of the pay code.  I'm just  
25 talking about the actual numbers that they worked.

1 Is that correct?

2 A. Yes.

3 Q. Okay. And I believe I covered this but just to  
4 be clear, if a manager wanted to -- and it may be  
5 multiple managers. I understand you have multiple  
6 departments.

7 But if management wanted to simply schedule  
8 techs for all the shifts without any input from them,  
9 they have the ability to do so; correct?

10 A. Can you clarify what you mean by "scheduling"?

11 Q. Sure. Yeah. Sure.

12 What I'm getting at is I'm talking really about  
13 the D06 shifts. But what I'm saying is -- what I'm  
14 asking you, is the managers do the same thing that  
15 they're doing for the non-D06 shifts for the D06 shifts:  
16 Just go ahead and schedule them without putting out a  
17 sign-up sheet?

18 A. They could. It would have other implications,  
19 but yes.

20 Q. Okay.

21 THE HEARING OFFICER: Can I just take the  
22 witness on voir dire?

23 / / /

24 / / /

25 / / /

1 A. Yes.

2 Q. If you're not qualified for a call shift, then  
3 you're not qualified for any other graveyard?

4 A. That is correct.

5 Q. Okay. That worked out better. Sorry about  
6 that.

7 A. Yes. I'm sorry.

8 Q. Now, when you were in -- when you were an  
9 assistant supervisor -- is that what it was?

10 A. Yes.

11 Q. Okay.

12 -- did you have knowledge of the full-time  
13 equivalents, or FTEs, that were budgeted to the lab?

14 A. And I'll qualify. I wasn't an assistant  
15 supervisor. I was the assistant laboratory manager and  
16 ultimately a manager for a short time. But, yes, I had  
17 to -- I was involved with the budget preparations of the  
18 department.

19 Q. Okay. And excluding any type of sick or  
20 vacation leave, were there enough FTEs to staff all the  
21 shifts needed by the lab with the techs working only 80  
22 hours per pay period?

23 A. No.

24 Q. Okay. And so was there any time from 1999 on  
25 that there were not three techs scheduled for graveyard

1 Q. Okay. So going back to the call shifts Friday  
2 and Saturday graveyard, are there ever any days where no  
3 one works that shift?

4 A. I'm not sure what's --

5 Q. Sure.

6 A. I'm not sure what you're asking.

7 Q. Sure. Let me ask a different question.

8 Is the lab ever shut down?

9 A. No. There always has to be three techs.

10 Q. Okay. On every graveyard shift; is that  
11 correct?

12 A. Correct.

13 Q. Including the call shifts?

14 A. Correct.

15 Q. Are you familiar with the current staffing  
16 levels of the lab?

17 A. Yes.

18 Q. Are there enough full-time employees to cover  
19 all the shifts required at the lab without some  
20 employees working over 80 hours per pay period?

21 A. No.

22 Q. Okay. So in order to fully staff the required  
23 shifts at the lab, some employees will have to work over  
24 80 hours per pay period; correct?

25 A. Yes. That's the norm, yes.

**EXHIBIT - 8**

1 I'm going to allow it because I have a follow-up  
2 question.

3 If you know the answer to that question.

4 THE WITNESS: Yes.

5 MR. VASQUEZ: Okay.

6 THE HEARING OFFICER: Okay. So let me ask the  
7 question. Ms. McNerny, does SBCERA account for  
8 scenarios where there may be classes of employees that  
9 have mandatory overtime?

10 THE WITNESS: So the example that I gave of a  
11 deputy would be one of them. But the overtime portion  
12 is not compensation earnable. Just the straight pay  
13 associated with those extra hours.

14 THE HEARING OFFICER: Okay. So if --

15 And I don't know. This is -- this is a broad  
16 question. It could be overbroad. I'm just asking  
17 Ms. McNerny if she knows.

18 Do you know of any classes of employee within  
19 the County that -- as Mr. Vasquez said, that work -- for  
20 example, public safety -- who might work, as a standard,  
21 over 80 hours that have a built-in requirement that they  
22 work over 80 hours per pay period?

23 THE WITNESS: Yes. It's -- they are -- it's  
24 built-in. It's required them to work four 12-hour  
25 shifts, for example, in the case of the jail deputies,

1 which is why it's considered part of their standard tour  
2 of duty.

3 THE HEARING OFFICER: Okay. Standard tour?

4 THE WITNESS: Correct.

5 THE HEARING OFFICER: So that would be  
6 compensation earnable?

7 THE WITNESS: The straight pay for an  
8 additional 16 hours in the example of the deputies, yes.

9 THE HEARING OFFICER: So is that -- I mean, is  
10 that a general categorization or is it special to public  
11 safety?

12 THE WITNESS: The only two instances that I'm  
13 aware of are in safety.

14 THE HEARING OFFICER: Public safety?

15 THE WITNESS: Yes.

16 THE HEARING OFFICER: Okay. And is the reason  
17 the tour of duty because it is a part of a preset  
18 schedule that is mandated?

19 THE WITNESS: Correct.

20 THE HEARING OFFICER: Thank you.

21 Go ahead, Mr. Vasquez.

22 So, Ms. McInerny, just one further question in  
23 regards to that.

24 Does that mean that if you have a public safety  
25 employee who worked over 80 hours -- okay? -- and that

**EXHIBIT - 9**

1 have established those similar type of programs where  
2 you're paid on production. We tend to tie any sort of  
3 compensation on the hourly rate, whether it's double  
4 time or overtime.

5 Q. So is it fair to say that your understanding is  
6 the program -- the D06 program was implemented to  
7 incentivize techs to take those undesirable shifts?

8 A. Correct.

9 MR. VASQUEZ: No further questions.

10 THE HEARING OFFICER: Redirect?

11

12 REDIRECT EXAMINATION

13 BY MR. WESTERFIELD:

14 Q. Mr. Prieto, I guess you've already got it open.  
15 So in this e-mail spanning pages AR-1333 -- or -1332 to  
16 -1336 the word "regularly scheduled shifts" comes up  
17 quite a bit, and there was a colloquy with Mr. Vasquez  
18 about this.

19 When you see the word "regularly scheduled  
20 shifts," do you understand it to mean a shift that's  
21 part of an employee's tour of duty?

22 A. Correct. Yes.

23 Q. And does any employee's tour of duty -- I  
24 believe you answered this, so I apologize if I'm asking  
25 the same question.

**EXHIBIT - 10**

1 e-mail, do you understand D06 to be paid for services  
2 rendered within a CLS's normal working hours?

3 A. No.

4 Q. Why not?

5 A. It's very clear through the answer of these  
6 questions that the pay for the D06 shift, which is  
7 happening on Friday and Saturday nights, is outside of  
8 the normal working hours for all of the CLS employees.

9 Q. There's been some testimony today about other  
10 pay codes that use the numbers, the nomenclature D07 and  
11 D08.

12 Has any D07 or D08 been reported to SBCERA by  
13 ARMC since 1999?

14 A. No. There's been no instances.

15 MS. DUNNING: I have no further questions.

16 THE HEARING OFFICER: Cross?

17 MR. VASQUEZ: Can we take a short break before  
18 I cross?

19 THE HEARING OFFICER: Sure. Take ten minutes.

20 MR. VASQUEZ: Perfect. Thank you.

21 THE HEARING OFFICER: Thank you.

22 (Recess taken from 3:33 p.m. until 3:44 p.m.)

23 THE HEARING OFFICER: We're back on the record  
24 with the cross, Mr. Vasquez.

25 MR. VASQUEZ: Thank you.

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**PROOF OF SERVICE**

I am over the age of eighteen years and not a party to the within action. I am employed by the LAW OFFICES OF DAVID VASQUEZ, APC, whose business address is: 301 E Vanderbilt Way, # 420, San Bernardino, CA 92408

On the date listed below, I served the within document(s) described as:

**APPELLANTS' CLOSING STATEMENT**

on the interested parties in this action:

Ashley K. Dunning, Esq. <a href="mailto:adunning@nossaman.com">adunning@nossaman.com</a>  Alexander Westerfield, Esq. <a href="mailto:awesterfield@nossaman.com">awesterfield@nossaman.com</a>  <a href="mailto:BORlegalservices@sbcera.org">BORlegalservices@sbcera.org</a>	<i>Attorneys for SBCERA</i>
Duane E. Bennett, Esq. <a href="mailto:debennettlaw@gmail.com">debennettlaw@gmail.com</a>	<i>Hearing Officer</i>

**BY EMAIL SERVICE**

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

Executed on November 12, 2025 at Redlands, California.

DAVID VASQUEZ  
DAVID VASQUEZ