

MEMORANDUM OF UNDERSTANDING

BETWEEN

**PROFESSIONAL ASSOCIATION
COUNTY EMPLOYEES**

(PUBLIC DEFENDERS)

UNIT 31

AND

THE COUNTY OF FRESNO

DECEMBER 16, 2019 – DECEMBER 12, 2021

UNIT 31

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INTRODUCTION/PURPOSE

We, the Undersigned, duly appointed representative of the County of Fresno, hereinafter referred to as "County" and Professional Association County Employees, Unit 31, hereinafter referred to as "Association", having met and conferred in good faith, do hereby jointly prepare and execute the following written Memorandum of Understanding (MOU) for Representation Unit 31. It is the purpose of the MOU to promote and provide for harmonious relations, cooperation, and understanding between management and the employees covered herein and to provide an orderly and equitable means of resolving any misunderstandings or differences which may arise under this MOU.

SALARIES

<u>Classifications</u>	<u>Current Bi-weekly Salary Range</u>	<u>2% Increase Effective 12/16/19</u>	<u>5 Step Conversion Effective 1/13/20</u>
Defense Attorney I	2373	2420	2548
Defense Attorney II	2770	2825	2973
Defense Attorney III	3324	3390	3568
Defense Attorney IV	3889	3967	4175
Senior Defense Attorney	4186	4270	4494

DUES AND DEDUCTIONS

The Association may have the regular dues of its bargaining unit members deducted from their paychecks under procedures as follows:

The Association is solely responsible for distributing to, and collecting from, employees the dues deduction authorization forms. It is the employees' responsibility to submit requests to start or stop dues deductions directly to the Association and not to the County. The Association is responsible for maintaining the dues deduction forms from individual employees. Copies of an individual employee's dues deduction authorization need not be provided to the County unless a dispute arises about the existence or terms of the authorization. Questions regarding Association membership, dues amounts, and payroll deductions must be directed to the Association and not the County.

The Association will provide to the County an updated, certified dues deduction list of bargaining unit members who have provided written authorization for regular dues deductions. The County will deduct dues for only those employees who are in the bargaining unit in accordance with such certified list. The Association will immediately notify the County of any change to an employee's dues deduction, including starting and stopping dues deductions, or validly cancelling or revoking a dues deduction authorization, and will promptly provide the County an updated certified dues deduction list noting any specific changes from the last list provided to the County. The County will implement the change(s) in the pay period following the County's receipt of such notification.

The Association shall indemnify, defend, and hold the County, its officers, agents, and employees harmless from and against any and all claims, demands, losses, defense costs, suits, or other action or liability of any kind or nature arising from this section, including, claims for or related to employee authorizations, revocations, deductions made, cancelled, or changed in reliance on the Association's representations and certifications regarding employee dues deduction authorizations.

This section of the MOU is not grievable.

RECOGNITION

Pursuant to the provisions of the Fresno County Employee Relations Ordinance, the certification of the Fresno County Civil Service Commission, and appropriate State law, the County hereby recognizes the Association as the exclusive representative of all employees whose classifications have been certified for inclusion by the Fresno County Civil Service Commission in Unit 31.

Should any classification be certified for inclusion by the Fresno County Civil Service Commission during the term of this MOU, the Employee Relations Ordinance, section 3.12.240 governs.

REPRESENTATION RIGHTS

The Association shall have the right to meet and confer in good faith with the County regarding wages, hours, and other terms and conditions of employment for representation Unit 31, within the scope of representation.

The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including but not limited to wages, hours and other terms and conditions of employment, except, however, that the scope of representation shall not include the consideration of the areas enumerated as exclusive County rights in the Management Rights Article of this MOU.

RELEASE TIME

The Association may request that a reasonable number of employees, who serve as official representatives of the Association, be released from work, with prior department head approval, without loss of compensation when meeting and conferring with the County where matters within the scope of representation are being considered.

The Association shall submit a written request for release time to the department head, or designee, at least seventy-two (72) hours in advance of the meeting. The use of County time for this purpose shall not be excessive, nor shall it interfere with the performance of County services as determined by the department head.

BULLETIN BOARDS

The County shall provide space for and permit the installation of Association bulletin boards (or provide reasonable space on County bulletin boards) for official Association notices at each central work location. Such bulletin boards shall be maintained in accord with provisions of the County Employee Relations Ordinance.

No such bulletin boards shall be located in areas frequented by the public doing business with the County, as determined by the County.

MEETING PLACE

The County, at the Association's request, shall reasonably make available conference rooms and other meeting areas for the purpose of holding Association meetings during off-duty time periods provided space can be made available without interfering with County needs. The Association shall provide timely advance notice (48 hours) of such meetings. The Association also agrees to pay any additional cost of security, supervision, damage, and cleanup and shall comply with County regulations for assignment and use of such facilities.

REPRESENTATION IN COURT

Subject to all appropriate provisions of Government Code Sections, the County will, upon request of an employee or former employee, defend the employee against any claim or action for an injury arising out of an act or omission occurring within the scope of employment as an employee of the County and will pay any judgment based thereon or any compromise or settlement of the claim or action to which the County has agreed.

BEREAVEMENT LEAVE

Each employee occupying a permanent position shall be eligible for paid Bereavement Leave up to a maximum of twenty-four (24) hours (to begin no later than 15 working days after notification and, if non consecutive, to conclude no later than 30 calendar days from notification) per bereavement for the death of a qualifying relative. A qualifying relative shall be defined as the employee's: legally recognized spouse, mother, step-mother, father, step-father, brother, step-brother, sister, step-sister, child, step-child (including California Health and Safety Code, Section 102950), grandmother, step-grandmother, grandfather, step-grandfather, or grandchild, or step-grandchild. Also qualifying shall be an employee's corresponding relative through their legally recognized spouse: spouse's mother, spouse's father, spouse's brother, spouse's sister, spouse's child (including California Health and Safety Code, Section 102950), spouse's grandmother, spouse's grandfather, or spouse's grandchild. Employees granted Bereavement Leave shall only be paid for any work hours regularly scheduled, but not worked.

Employees may request use of annual leave when the employee desires time off in excess of twenty-four (24) hours for bereavement-related purposes.

In determining the number of hours to be permitted for a bereavement, the department head will, in addition to other factors, consider potential interruption of service.

Employees taking Bereavement Leave shall submit a statement under penalty of perjury on a form provided by the County stating the name of the deceased, place of death, relationship to the employee, and circumstances showing that the time taken as Bereavement Leave was reasonably necessary in order for the employee to attend to any necessary family obligations.

HOLIDAYS

The dates listed below which fall within the normal workweek of Monday through Friday shall be considered paid holidays and shall be observed subject to provisions contained in the Salary Resolution:

January 1 (New Year's Day)
Third Monday in January (Martin Luther King Jr.'s Birthday)
Third Monday in February (Washington - Lincoln Day)
March 31 (Cesar Chavez Day)
Last Monday in May (Memorial Day)
July 4 (Independence Day)
First Monday in September (Labor Day)
November 11 (Veteran's Day)
Fourth Thursday in November (Thanksgiving Day)
Day following Thanksgiving
December 25 (Christmas)
Every Monday following a Sunday which falls on January 1, March 31, July 4, November 11, or December 25
Every Friday when such Friday immediately precedes January 1, March 31, July 4, November 11, or December 25

EXTENSION OF PAID MILITARY LEAVE

Eligible Bargaining Unit Members shall be subject to paid military leave as approved by the Board of Supervisors until such time that the Board of Supervisors terminates said Resolution.

SPECIALIZATION INCENTIVE

A Defense Attorney who completes certification through the California Bar as a Criminal Law Specialist shall receive \$204 per pay period in addition to his/her normal pay. Attorneys receiving the specialization incentive shall meet rigorous quality objective standards as determined by the California State Bar, as well as demonstrate a high level of competency as determined by the Department Head.

Proof of certification must be provided by the employee to Department management for verification. Upon the receipt of the Department's validation, payment may begin the following pay period.

COMPUTER PROGRAMMING MODIFICATIONS

Notwithstanding any language in this MOU to the contrary, the respective articles of this MOU which will involve modifications to existing computer programs of the County shall not become effective until the beginning of the payroll period following the completion of such modifications. Furthermore, the provisions of this article shall not be used to extend the effective date of salary changes.

MANAGEMENT RIGHTS

- A. All County rights, powers, functions, and authorities except as expressly abridged by this MOU shall remain vested in the County whether or not they have been exercised in the past.
- B. No portion of this County Management Rights Article shall be construed to obligate the County in any way.
- C. All decisions made in accordance with County Management Rights which are established in this section or are inherently existent shall not be subject to any aspect of the grievance procedure or unfair employee relations practice charges.
- D. This article is not intended to nor may it be construed to modify the provisions of the Charter relating to Civil Service or personnel administration. The Civil Service Commission shall continue to exercise authority delegated to it.
- E. This article is not intended to modify those rights which have been granted to employees in this MOU following procedures specified in Government Code Sections 3500 et seq.
- F. In the exercise of its rights, the County shall not require an employee to perform an act or acts contrary to licensing law.
- G. This article is not intended to restrict consultation with the Union at the request of the latter regarding matters within the right of the County to determine.
- H. The rights, powers, and authorities of the County include, but are not limited to, the sole and exclusive right to:
 - 1. Determine the mission of its constituent departments, commissions, boards, and committees;
 - 2. Set standards of services and evaluate the County's effectiveness in delivery of these services;
 - 3. Determine the procedures and standards for employee selection, promotion, demotion, transfer, reassignment and/or layoff;
 - 4. Select, train, direct, assign, demote, promote, layoff, dismiss its employees;
 - 5. Communicate fully and openly with its employees on any subject at any time orally, in writing, both at work or through the U.S. mail;
 - 6. Take disciplinary actions;
 - 7. Relieve its employees from duty or reassign employees because of lack of work or for other reasons the County considers legitimate;
 - 8. Evaluate and maintain the efficiency of County operations;

9. Determine and change the method, means, personnel, and standards by which County operations are to be conducted;
10. Determine the content of job classifications;
11. Take all necessary actions to carry out its mission in emergencies including the suspension of portions or all of this MOU for the period of emergency as determined by the County;
12. Exercise complete control and discretion over its organization and the technology to perform its work;
13. Make rules and regulations pertaining to employees consistent with this MOU;
14. Make all financial and budgetary decisions;
15. Establish, allocate, schedule, assign, modify, change and discontinue work shifts and working hours and workweeks;
16. Contract, subcontract, establish, merge, continue or discontinue any function or operation of the County;
17. Engage consultants for any future or existing function or operation of the County;
18. Order overtime.

CONTINUITY OF OPERATIONS

Continuous and uninterrupted service to the citizens of the County, and orderly employee/employer relations between the County and its employees are essential considerations of this MOU. Therefore, the Association agrees on behalf of itself and those County employees which it represents both individually and collectively, that there shall not be any strikes, picketing, boycotting, work stoppages, sitdowns, sickouts, speed-ups, slow-downs, or secondary action such as refusal to cross picket lines or any other concerted refusal to render services or to obstruct the efficient operations of the County or refusal to work, including refusal to work overtime, or any other curtailment or restriction of work at any time.

The County shall not utilize a lock-out technique in its employee/employer relationships.

BAR DUES

The County of Fresno shall pay directly to the State Bar of California, Bar Dues for each employee covered by this MOU. The County of Fresno shall not pay for any Attorney Specialization Bar Dues nor Section Membership fees. Employees shall submit their fee statements to the Public Defender's Office no later than thirty (30) days prior to the due date shown on the fee statement to allow for timely processing and payment.

Employees who do not submit their fee statement at least thirty (30) days prior to the due date shall be required to pay their Bar Dues directly to the State Bar of California. The County shall, upon request, reimburse these employees for their payment of Bar Dues providing that the request for reimbursement is made in the current fiscal year (June 30). The employee shall be responsible for any penalties and fees that may be assessed as a result of failure to pay Bar Dues timely.

BILINGUAL SKILL PAY

Association members are eligible for bilingual skill pay of \$50 per pay period. Designated Bilingual Skill Pay positions are at the sole discretion of the Department Head. Position designation/eligibility shall be governed by the Fresno County Salary Resolution, Section 533 with the exception of 533.1.

Pay Provisions:

1. Bilingual Skill Pay shall be paid in the amount of \$50 per pay period.
 - a) Employee pay periods that consist of all paid (e.g. vacation) and/or unpaid leave hours will not be eligible for bilingual skill pay.
2. Employees shall be paid in the amount of \$50 per pay period regardless of the number of languages they are certified for.

SAVINGS CLAUSE

The provisions of this MOU are declared to be severable and if any section, subsection, sentence, clause or phrase of this MOU shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this MOU, but they shall remain in effect, it being the intent of the parties that this MOU shall stand notwithstanding the invalidity of any part. Should any portion of this MOU be found invalid or unconstitutional, the parties will meet and confer to arrive at a mutually satisfactory replacement for the portion found to be invalid or unconstitutional.

FULL UNDERSTANDING

It is intended that this MOU sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any other previous understanding or agreements by the parties (with the exception of addendums and sideletter agreements), whether formal or informal, regarding any such matters are hereby superseded and terminated in their entirety. With respect to addendums and sideletter agreements, all previously existing addendums and sideletter agreements that have not expired, and addendums and sideletter agreements entered into during the term of this MOU shall continue in force subject to the terms and conditions set forth within each. Further, neither party shall be bound by any promise or assurance that is not explicitly covered in this MOU, addendum or sideletter agreement signed by both parties.

This MOU shall govern in case of conflict with provisions of existing County ordinances, rules and regulations pertaining to wages, hours, and other terms and conditions of employment, but otherwise such ordinances, rules and regulations shall be effective and the Board of Supervisors

and other County Boards and Commissions retain the power to legislate pertaining to such matters subject to compliance with the Meyers-Milias-Brown Act and other applicable provisions of law provided such actions are not in conflict with the provisions of this MOU.

EMPLOYEE GRIEVANCE RESOLUTION PROCEDURE

The Employee Grievance Procedure and Forms agreed to on December 18, 2017, shall be available on the Human Resources website. No changes shall be made to the procedure and/or forms without mutual agreement of the Association and County.

EMPLOYMENT PROTECTION SYSTEM

The Employment Protection System agreed to on December 18, 2017, shall be available on the Human Resources website. No changes shall be made to the procedure without mutual agreement of the Association and County.

WEINGARTEN RIGHTS

The County and the Association agree that it is in the best interest of both parties and the best interest of the County employees that all employees be informed of these rights.

The County agrees that every employee who is subject to an administrative investigatory interview by management will be given a copy of their Weingarten rights and a form to indicate if he/she wishes to invoke his/her Weingarten Rights. The employee will be given time to read the form and mark if he/she wishes to have a representative in the meeting. Employees have the right to request that a representative be present at any investigatory meeting when the employee reasonably believes that disciplinary action might result from the investigation. The employee will then sign the form and be given a copy of the signed form.

This article shall not be grievable or appealable, except for the employee's right to appeal if their Weingarten rights are violated.

ANNUAL LEAVE

All employees covered by this MOU hired on or before October 9, 1983, will participate in the Annual Leave II (formally known as New Annual Leave) Plan as governed by the Fresno County Salary Resolution, Section 600.

All employees covered by this MOU hired after October 9, 1983, will participate in the Annual Leave IV Plan as governed by the Fresno County Salary Resolution, Section 600.

LAYOFF

Layoffs and reemployment from the layoff list shall be based on seniority-only provisions of Personnel Rule 12.

TIER III RETIREMENT – MANDATORY [Three (3) year average]

Effective June 18, 2007, any employee newly hired into a permanent General/Miscellaneous position represented by Professional Association County Employees shall be pursuant to the following sections of the County Employees Retirement Law of 1937 (Tier III):

- GC Section 31676.15
- GC Section 31630
- GC Section 31462

The vested “health benefit” (currently \$3.00 per year of service) resulting from the Settlement Agreement (Fresno County Superior Court Cases 605588-3, 608028-7 and 634171-3) [see Section 9] entered into judgment on December 15, 2000 shall be extended to employees enrolled in Tier III.

Any employee occupying a permanent position that is represented or unrepresented, who promotes, demotes or transfers into a permanent position represented by Professional Association County Employees, shall continue under the retirement tier which they were enrolled in immediately prior to their promotion, demotion or transfer.

Any employee represented by Professional Association County Employees, who promotes, demotes or transfers into a permanent position that is represented or unrepresented, shall continue under the retirement tier which they were enrolled in immediately prior to their promotion, demotion or transfer.

Any employee who promotes, demotes or transfers from a Safety classification to a General/Miscellaneous classification, or vice versa, shall be enrolled in the corresponding retirement tier (e.g., Tier I Safety membership shall end and Tier I General/Miscellaneous membership shall begin, Tier II Safety membership shall end and Tier II General/Miscellaneous membership shall begin).

Any employee who deferred retirement prior to the December 15, 2000 Ventura II settlement agreement who subsequently rejoins the retirement association shall be enrolled in Tier I. Any other employee who defers retirement and subsequently rejoins the retirement association shall continue under the retirement tier he or she was enrolled in prior to deferral provided that tier is available. If that tier is no longer available, the employee shall be enrolled in the retirement tier offered to newly hired employees.

TIER IV RETIREMENT – MANDATORY – [THREE (3) YEAR AVERAGE]

Any employee newly hired into a permanent position between June 11, 2012, and December 23, 2012, in a General/Miscellaneous classification represented by the Professional Association County Employees – Unit 31 (Public Defenders), shall be enrolled pursuant to the following sections of the County Employees Retirement Law of 1937 (Tier IV):

- GC 31676.1 – 1.67% @ 57½; 2% @ 61; 2.43% @ 65
- GC 31621 – Default Member Contribution Code
- GC 31462 – 3 year average for final compensation
- 0 (zero) Cost of Living

The “Settlement Health Benefit” (currently \$3.00 per year of service) resulting from the Settlement Agreement (Fresno County Superior Court Cases 605588-3, 608028-7 and 634171-3) [see Section 9] entered into judgment on December 15, 2000 shall not be extended to employees enrolled in General/Miscellaneous Tier IV.

Any employee occupying a permanent position who promotes, demotes or transfers from a Safety classification to a General/Miscellaneous classification, or vice versa, shall be enrolled in the corresponding retirement tier (e.g., Tier I Safety membership shall end and Tier I General/Miscellaneous membership shall begin; Tier II Safety membership shall end and Tier II General/Miscellaneous membership shall begin).

CORRESPONDING TIERS

GENERAL/MISC.		SAFETY
Tier I	←————→	Tier I
Tier II	←————→	Tier II
Tier III	↖————→	
Tier IV	←————→	Tier IV

NOTE: Employees initially enrolled in Tier III General/Miscellaneous who become enrolled in Tier II Safety and subsequently return to a permanent position in a General/Miscellaneous classification shall be re-enrolled into Tier III General/Miscellaneous.

Any employee who deferred retirement prior to the December 15, 2000, Ventura II settlement agreement who subsequently rejoins the retirement association shall be enrolled in Tier I General/Miscellaneous or Tier I Safety. Any other employee who defers retirement and subsequently rejoins the retirement association shall continue under the retirement tier he or she was enrolled in prior to deferral.

The foregoing summary of Tier IV General/Miscellaneous Retirement Plan – Mandatory is for the parties’ general reference and does not modify the County Board Resolution or County Ordinances which established this tier.

TIER V GENERAL RETIREMENT PLAN (PEPRA) – MANDATORY

Pursuant to the California Public Employees’ Pension Reform Act of 2013 (“PEPRA;” AB 340, GC §§7522 et seq), any employee newly hired into a permanent position on or after December 24, 2012, who will become a new member of FCERA on or after January 1, 2013, shall be enrolled in the State mandated defined benefit retirement formula specified in Government Code § 7522.20 and will be subject to all other retirement plan provisions as mandated by PEPRA. This state mandated retirement tier shall be known as the Tier V General Retirement Plan.

Consistent with PEPRA, the exception to being enrolled into General Tier V for any employee newly hired on or after December 24, 2012, who will become a new member of FCERA on or after January 1, 2013, is an individual who was previously employed by another public employer and was able to establish reciprocity with FCERA as specified in § 7522.02(c). In the case of reciprocity being established, the new employee would be enrolled into General Tier IV.

The foregoing information is only for the parties’ general reference.

HEALTH INSURANCE

1. Effective December 16, 2019, the County will contribute up to, on behalf of each full-time (.8 or higher FTE) up to the following amounts per pay period based on the employee's plan selection:

<u>Plan Selection</u>	<u>Amount</u>	<u>Add'l Amount</u>	<u>Total Contribution</u>
Employee Only	\$343	N/A	\$343
Employee plus Child(ren)	\$343	\$110	\$453
Employee plus Spouse	\$343	\$110	\$453
Employee plus Family	\$343	\$115	\$458

2. A minimum of one (1) health benefit plan, one (1) dental benefit plan, one (1) vision benefit plan, and one (1) pharmacy benefit plan will be available to employees and their dependents. If, during the term of this agreement, any of the health benefit plan(s), dental benefit plan(s), vision benefit plan, mental health plan, or the pharmacy benefit plan is unable to fulfill its contractual obligation, the County, upon consultation with the Health Benefits Advisory Committee (HBAC), if necessary, will secure a suitable replacement.
3. Any employee participating in the County's Health Benefit Program must enroll in one of the Health Insurance Plan(s), unless an employee chooses to opt out of the County's Health Benefit Program.
4. Unless otherwise court ordered, eligible employees may choose to opt out of the County's Health Benefit Program (including any related life insurance program) by completing the Opt Out Form and by providing written proof that they have medical coverage from another group health insurance plan. In addition, the employee must verify that a discontinuance of the County's Health Benefit Program does not constitute a violation of any court order or legal obligation that the employee may be subject to. Eligible employees may only opt out during the designated open enrollment period for each respective Health Benefit Plan Year as defined by Human Resources or via a qualifying event (must be turned in within 30 days of the effective date of other group health insurance). Group health insurance plan is defined as employer-sponsored medical coverage.

In the event an employee, who has opted out of the County's Health Benefit Program, subsequently loses his/her alternate medical coverage due to a qualifying event as defined by the Consolidated Omnibus Budget Reconciliation Act (COBRA), the employee may re-enroll in the County's Health Benefit Program. It shall be the responsibility of the employee to notify Employee Benefits within 30 days of the qualifying event.

Any employee who opted out of the County's Health Benefit Program for any Plan Year and desires to maintain their opt out status for subsequent Health Plan Years, must submit a new Opt Out Form during the open enrollment period for each respective Health Plan Year as defined by Human Resources. If an Opt Out Form for any Health Plan Year is not received in the Employee Benefits Division within the respective open enrollment period for each Plan Year as defined by Human Resources, said employee shall be enrolled in the non-Kaiser HMO

Health Plan and DHMO Dental Plan. Additionally, any employee who has opted out of the County's Health Benefit Program may re-enroll in the Program during the annual Open Enrollment period.

5. Any newly hired employee eligible to participate in the County's Health Benefit Program must enroll in one of the Health Insurance Plan(s), unless the newly hired employee chooses to opt out (as delineated in No. 4 above) of the County's Health Benefit Program no later than the first Monday of the second pay period of employment. Any newly hired employee who does not select one of the Health Insurance Plans and does not opt out of the County's Health Benefit Program by the stated deadline, shall be enrolled in the non-Kaiser HMO Health Plan and DHMO Dental Plan.
6. If during the term of this agreement the State or Federal government legislates mandatory benefit levels in excess of those covered by agreement between the County and health/dental plan(s) which results in increased premiums, either the County or the employee organization may request the other party to meet and confer regarding the terms and conditions set forth herein.
7. Pursuant to the HBAC agreement, the parties agree to continue to meet and discuss the County's health benefit program before the commencement of each Plan Year.

MOU REOPENERS

Salary:

- The parties agree to a one-time only re-opener with discussions to commence no sooner than November 1, 2020. The parties also acknowledge that this will not result in a salary reduction.

Health Insurance:

- The parties agree to a one-time only re-opener with discussions to commence no sooner than October 1, 2020, for Plan Year 2021.

TERM OF MEMORANDUM OF UNDERSTANDING AND RENEGOTIATION

This MOU shall be in effect from December 16, 2019, through December 12, 2021. Negotiations for the successor MOU shall begin on or about September 1, 2021.

COUNTY OF FRESNO

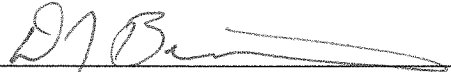
By



Gilbert De La Torre
County of Fresno

PROFESSIONAL ASSOCIATION
COUNTY EMPLOYEES - UNIT 31

By



Daniel J. Brickey, President - Unit 31
Professional Association County Employees

Date:

11-13-19

Date:

11-13-19