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AUG 29 2018

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

CITY OF ELKO,

Petitioner,

v.

THE ELKO POLICE OFFICERS PROTECTIVE
ASSOCIATION, NEVADA PUBLIC SAFETY
OFFICER COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO, LOCAL 9110,

Respondent.

Case No. 2017-026

ORDER

Item No. 831

On July 11, 2018, this matter came before Panel E of the State of Nevada, Local Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Local Government-Management Relations Act (the "Act"), NAC Chapter 288 and NRS Chapter 233B. The Board held an administrative hearing on this matter on July 11, 2018.

The City of Elko ("City") has recognized three employee organizations: (1) the Police Officers Association; (2) the Elko Firefighters Association; and (2) the Blue Collar and Clerical Bargaining Unit. The City and the Elko Police Officers Protective Association ("Association") were negotiating a successor CBA when a dispute arose over whether sergeants should be included in the same bargaining unit as the other employees in that bargaining unit. The City contends that the Elko Police Department Sergeants are supervisory employees pursuant to NRS 288.075(1)(a) and, as such, are excluded from the bargaining unit for the employees under the direction of the Sergeants. The Association contends that the Sergeants are not supervisory employees pursuant to NRS 288.075 and should not be excluded. The parties petitioned the Board to resolve the dispute.

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1 The dispute centers on the application of NRS 288.140 and NRS 288.075. Specifically, the
2 parties contend the following statutes are primarily at issue:

3 NRS 288.170(3) provides, in pertinent part:

4 A head of a department of a local government, an administrative employee or a
5 supervisory employee must not be a member of the same bargaining unit as the
6 employees under the direction of that department head, administrative employee or
supervisory employee.

7 Further, NRS 288.170(6)(b) provides that, as used in that section (NRS 288.170), “‘Supervisory
8 employee’ means a supervisory employee described in paragraph (a) of subsection 1 of NRS 288.075.”

9 NRS 288.075(1)(a) defines “Supervisory employee” as follows:

10 ‘Supervisory employee’ means: Any individual having authority in the interest of the
11 employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or
12 discipline other employees or responsibility to direct them, to adjust their grievances or
13 effectively to recommend such action, if in connection with the foregoing, the exercise of
14 such authority is not of a merely routine or clerical nature, but requires the use of
independent judgment. The exercise of such authority shall not be deemed to place the
employee in supervisory employee status unless the exercise of such authority occupies a
significant portion of the employee’s workday;

15 Preliminarily, the parties dispute the meaning of the foregoing statute (specifically subsection
16 (1)(a) of NRS 288.075 defining a “supervisory” employee). The City contends that only 1 of the 12
17 criteria listed therein is required for exclusion. The Association argues that only employees who meet
18 all of the 12 criteria in subsection (1)(a) of NRS 288.075 should be excluded from the bargaining unit.

19 Generally, when a statute’s language is plain and its meaning clear, the courts will apply that
20 plain language. *Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007); *Nevada v. Secretary of*
21 *State*, 124 Nev. 874, 881, 192 P.3d 1166, 1170–71 (2008) (“court begins its statutory analysis with the
22 plain meaning rule”); *Pub. Employees’ Benefits Program v. Las Vegas Metro. Police Dep’t*, 124 Nev.
23 138, 147, 179 P.3d 542, 548 (2008) (“it is well established that, when interpreting a statute, the
24 language of the statute should be given its plain meaning unless doing so violates the act’s spirit.”).
25 “Where the language of a statute is plain and unambiguous, and its meaning clear and unmistakable,
26 there is no room for construction, and the courts are not permitted to search for its meaning beyond the
27 statute itself.” *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293–94, 995 P.2d
28 482, 485 (2000). If the Legislature’s intention is apparent from the face of the statute, there is no room

1 for construction, and this court will give the statute its plain meaning. *Madera v. SIIS*, 114 Nev. 253,
2 257, 956 P.2d 117, 120 (1998). However, where a statute has no plain meaning, a court should consult
3 other sources such as legislative history, legislative intent and analogous statutory provisions. *Id.* “If
4 the statute is ambiguous, meaning that it is capable of two or more reasonable interpretations, this court
5 will ‘look to the provision’s legislative history and the ... scheme as a whole to determine what the ...
6 framers intended,’ and we will examine ‘the context and the spirit of the law or the causes which
7 induced the legislature to enact it.’” *Clark Cty. v. S. Nevada Health Dist.*, 128 Nev. 651, 656, 289 P.3d
8 212, 215 (2012). “Only when a statute is ambiguous will this court ‘resolve that ambiguity by looking
9 to the statute’s legislative history and construing the statute in a manner that conforms to reason and
10 public policy.’” *Pub. Employees’ Ret. Sys. of Nevada v. Gitter*, 393 P.3d 673, 679 (2017).

11 The Board finds that the statute plainly and unambiguously requires only 1 of the 12 criteria to
12 be shown. The statute clearly uses the word “or” and not “and”. *See Dezzani v. Kern & Assocs., Ltd.*,
13 134 Nev. Adv. Op. 9, 412 P.3d 56, 60 (2018) (holding that “the word ‘or’ is typically used to connect
14 phrases or clauses representing alternatives. Moreover, courts presume that ‘or’ is used in a statute
15 disjunctively unless there is clear legislative intent to the contrary.”); *McGrath v. State Dep’t of Pub.*
16 *Safety*, 123 Nev. 120, 123, 159 P.3d 239, 241 (2007) (concluding that “we presume that the Legislature
17 intended to use words in their usual and natural meaning”); *see contra City of Reno v. Reno Firefighters*
18 *Local 731*, Case No. A1-046049, Item No. 777-B (2012) (holding that NRS 288.075(1)(b) requires all
19 the functions to be found because of “the use of the conjunctive ‘and’ between subparagraphs (2) and
20 (3) means that supervisory employee under this subparagraph (1)(b) must have authority to perform all
21 of the functions described in subsections (1), (2) and (3) of subparagraph (b) in order to be properly
22 considered a ‘supervisory employee’.”).

23 In any event, the legislative history, intent, and analogous statutory provisions further dictates
24 this result. The Employee-Management Relations Act (“EMRA”) (Chapter NRS 288) is generally
25 modeled after the National Labor Relations Act (“NLRA”). The Nevada Supreme Court has recognized
26 that the intent of the EMRA is to apply the governing principles of the NLRA to Nevada’s local
27 government employees. *Truckee Meadows Fire Prot. Dist. v. Int’l Ass’n of Fire Fighters, Local 2487*,
28 109 Nev. 367, 374, 849 P.2d 343, 348 (1993); *City of N. Las Vegas v. State Local Gov’t Employee-*

1 *Mgmt. Rel. Bd.*, 127 Nev. 631, 639, 261 P.3d 1071, 1076 (2011); *Weiner v. Beatty*, 121 Nev. 243, 248-
2 49, 116 P.3d 829, 832 (2005).

3 The Board recognized this in the matter of *City of Reno v. Reno Firefighters Local 731*, Case
4 No. A1-046049, Item No. 777-B (2012) (noting that “[t]he purpose of the Act is similar to that of the
5 National Labor Relations Act as established and governs the collective bargaining relationship between
6 Nevada’s local government employers and local government employees, through their organizations.”),
7 citing *Truckee Meadows Fire Prot. Dist. v. Int’l Ass’n of Fire Fighters, Local 2487*, 109 Nev. 367, 374,
8 849 P.2d 343, 348 (1993). The Board held: “It follows then that the restriction on membership in an
9 employee organization is proportional to these contours of the Act.” *Id.*

10 The Board finds that the following United State Supreme Court decision is persuasive and
11 controlling in this matter: *N.L.R.B. v. Kentucky River Cmty. Care, Inc.*, 532 U.S. 706, 710–11, 121 S.
12 Ct. 1861, 1866, 149 L. Ed. 2d 939 (2001).

13 As the United States Supreme Court detailed:

14 The Act [NLRA] expressly defines the term ‘supervisor’ in § 2(11), which provides:
15 “The term ‘supervisor’ means any individual having authority, in the interest of the
16 employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or
17 discipline other employees, or responsibly to direct them, or to adjust their grievances, or
18 effectively to recommend such action, if in connection with the foregoing the exercise of
such authority is not of a merely routine or clerical nature, but requires the use of
independent judgment.”

19 *Kentucky River Cmty. Care, Inc.*, 532 U.S. at 710, 121 S. Ct. at 1866.

20 This is the exact same definition as in NRS 288.075(1)(a) (the statutory subsection at issue).¹
21 The Nevada Legislature did add an additional line to the end of the identical definition, requiring that
22 “[t]he exercise of such authority shall not be deemed to place the employee in supervisory employee
23 status unless the exercise of such authority occupies a significant portion of the employee’s workday.”
24

25 ¹ The Nevada Supreme Court holds that “[w]hen a federal statute is adopted in a statute of this state, a
26 presumption arises that the legislature knew and intended to adopt the construction placed on the federal
27 statute by federal courts. This rule of [statutory] construction is applicable, however, only if the state
28 and federal acts are substantially similar and the state statute does not reflect a contrary legislative
intent.” *State, Dep’t of Bus. & Indus., Office of Labor Com’r v. Granite Const. Co.*, 118 Nev. 83, 88, 40
P.3d 423, 426 (2002).

1 The Nevada Legislature explained that the additional requirement is to ensure that supervisory authority
2 was an authentic grant of supervisory authority and to guard against the practice of an employer creating
3 a “straw boss” as a ruse to avoid collective bargaining obligations. *See Minutes of Assembly*
4 *Committee on Governmental Affairs, A.B. 572 (58th Leg., April 22, 1975); see also Minutes of Senate*
5 *Committee on Legislative Operations and Elections, S.B. 98 (76th Leg., April 12, 2011) (stating that*
6 *“the establishment of supervisory union elements for those persons who did supervise the frontline*
7 *employees. This kept all employees from being in the same bargaining unit.”); City of Reno v. Reno*
8 *Firefighters Local 731, Item 777B. Nothing in the legislative history indicates that this additional*
9 *sentence was intended to require the employees to meet all of the criteria in subsection (1)(a) of NRS*
10 *288.075, but instead was added as a requirement based on the foregoing rational. See also Minutes of*
11 *Assembly Committee on Governmental Affairs, S.B. 98 (76th Leg., May 13, 2011) (stating that “The*
12 *Taft-Hartley Act of 1947² essentially set out the way labor-management relations in the United States*
13 *operative, particularly with regard to collective bargaining ... What we asking here is to bring Nevada’s*
14 *concepts in line with the Taft-Hartley Act ... What we are advocating is that Nevada’s collective*
15 *bargaining laws, under NRS Chapter 288, mirror the federal laws.”). As such, the Board finds that the*
16 *Acts are substantially similar, and the EMRA does not reflect a contrary legislative intent in this regard.*

17 *Kentucky River Cmty. Care, Inc.* provides that: “The text of § 2(11) of the Act that we quoted
18 above, 29 U.S.C. § 152(11), sets forth a three-part test for determining supervisory status. Employees
19 are statutory supervisors if (1) they hold the authority to engage in **any** 1 of the 12 listed supervisory
20 functions, (2) their “exercise of such authority is not of a merely routine or clerical nature, but requires
21 the use of independent judgment,” and (3) their authority is held “in the interest of the employer.”
22 *Kentucky River Cmty. Care, Inc.*, 532 U.S. at 712–13, 121 S. Ct. at 1867 (**emphasis added**).

23 The Board finds the NLRB precedent in this matter persuasive and controlling and thus the
24 Board applies the governing principles of the NLRA to Nevada’s local government employees. *See*
25 *also Serv. Employees Int’l Union, Local 117 v. So. Nevada Health Dist.*, Case No. 2017-011, Item No.
26 828, at 4-5 (adopting and applying *Kentucky River Cmty. Care, Inc.*).

28 ² The Taft-Hartley Act, formally known as the Labor Management Relations Act, amended, the NLRA.

1 Furthermore, it is black letter law that no portion of a statute should be rendered meaningless
2 nor should it be interpreted to produce an absurd or unreasonable result. *City of Reno v. Building &*
3 *Const. Trades Council of Northern Nevada*, 251. P.3d 718, 722 (2011). If the Board were to require all
4 12 of the criteria to be met in order for the exclusion to apply, an employee that had the right to hire,
5 transfer, suspend, promote, and discharge employees, but not the right to recall employees, would not be
6 considered a “supervisory” employee, for example. *See also Dezzani v. Kern & Assocs., Ltd.*, 134 Nev.
7 Adv. Op. 9, 412 P.3d 56, 60 (2018) (noting that “the dissent’s statutory analysis ignores fundamental
8 rules of statutory construction that begin with analyzing a statute’s plain language and its context in the
9 statutory framework, and instead, emphasizes rules of statutory construction involving grammar and
10 punctuation use that are generally resorted to only when they can be employed consistently with the
11 legislative intent). *See* 1A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes & Statutory*
12 *Construction* § 21.15 (7th ed. 2009) (stating that grammar and punctuation use are statutory
13 interpretation aids, but ‘neither is controlling unless the result is in harmony with the clearly expressed
14 intent of the Legislature,’ and acknowledging that ‘[c]ourts have indicated that punctuation will not be
15 given much consideration in interpretation because it often represents the stylistic preferences of the
16 printer or proofreader instead of the considered judgment of the drafter or legislator”).

17 Finally, the Act recognizes the inherent conflict of interest by bifurcating the supervisors from
18 the employees which they supervise and to avoid these inherent conflicts of interest in having a
19 supervisor that has power and authority over the people they supervise being in the same unit as the
20 employees that are subject to their supervisor. *See also* NRS 288.170(3) (“a supervisory employee
21 **must** not be a member of the same bargaining unit as the employees under the direction....”); *Kentucky*
22 *River Cmty. Care, Inc.*, 532 U.S. at 725, n. 5 (noting that “in many ... contexts of labor policy, ‘[t]he
23 ultimate problem is the balancing of the conflicting legitimate interests. The function of striking that
24 balance to effectuate national labor policy is often a difficult and delicate responsibility, which the
25 Congress committed primarily to the National Labor Relations Board, subject to limited judicial
26 review.”; *see also* testimony of Chief Reed and Sgt. Pepper as detailed below.

27 ...

28 ...

DISCUSSION

The current job description of the Sergeants provides, in pertinent part, that a Sergeant “[e]xercises direct supervision over the positions of Corporal, Patrol Officers in the classifications of Patrol Officer III, Patrol Officer II, and Patrol Officer I.” One of the essential duties of a Sergeant is to “[s]chedule manpower, review all reports from patrolmen, evaluate the work of patrolmen.”

As the direct supervisor over the officers, the Sergeants also have a significant role in disciplinary actions related to them. Section 1220.065 of the Elko Police Department Manual (“Manual”) states, in part, that the “primary responsibility for monitoring and controlling the actions of members and employees rests with their immediate supervisor, who shall normally be the initiator of the disciplinary process and who should use the their knowledge of supervision, their knowledge of the particular subordinate, their knowledge of the particular infraction, and the circumstances surrounding the infraction to recommend corrective actions.” As such, preliminarily, the Manual itself indicates a required use of independent judgment. Moreover, Section 1220.066 of the Manual provides that “Sergeants ... who personally oversee employees’ misconduct have the authority to exercise limited disciplinary actions.” Section 1220.068 of the Manual further authorizes supervisors to conduct confidential investigations and issue oral or written reprimands in the case of serious misconduct. While the Chief of Police is the final authority on all Department employee discipline, the supervisors play a significant role in the disciplinary process.

The Association argues that as the Chief of Police has the final authority, the Sergeants cannot “discipline” as provided for in NRS 288.075(1)(a). However, the statute does not provide that the subject supervisor has to be the final authority in order to be able to discipline per the statute. Indeed, statutory construction rules apply the plain meaning of words, and “discipline” simply means “to punish”. *City of Reno v. Reno Police Protective Ass’n*, 118 Nev. 889, 900, 59 P.3d 1212, 1220 (2002). The statute plainly requires that they have the “authority in the interest of the employer” to do so, not the final authority. Indeed, as indicated above, no portion of a statute should produce an absurd result – if final authority was read into the statute as being required, then the Chief of Police may have been deemed as the only supervisory employee. As Chief Reed testified himself, not even the Chief of Police is the final authority on all discipline, since serious disciplinary matters can be appealed under the

1 parties' CBA and can be reversed by an arbitrator (or by this Board should it have jurisdiction over the
2 alleged violation). As such, if the Board were to take the Association's argument to its logical end, the
3 statutory exclusion would be rendered meaningless. Chief Reed stated that Sergeants have to take
4 corrective actions as part of their job duty, and they handle a lot of things on the fly every single day
5 that are minor in disciplinary (also known as corrective action or sometimes just counseling or
6 mentoring).

7 In terms of the use of "independent judgment", the United States Supreme Court provides:

8 First, it is certainly true that the statutory term 'independent judgment' is ambiguous with
9 respect to the degree of discretion required for supervisory status. Many nominally
10 supervisory functions may be performed without the 'exercis[e of] such a degree of ...
11 judgment or discretion ... as would warrant a finding' of supervisory status under the Act.
It falls clearly within the Board's discretion to determine, within reason, what scope of
discretion qualifies.

12 ...

13 What supervisory judgment worth exercising, one must wonder, does not rest on
14 "professional or technical skill or experience"? If the Board applied this aspect of its test
15 to every exercise of a supervisory function, it would virtually eliminate "supervisors"
16 from the Act. Cf. *NLRB v. Yeshiva Univ.*, 444 U.S. 672, 687, 100 S.Ct. 856, 63 L.Ed.2d
115 (1980) (Excluding 'decisions ... based on ... professional expertise' would risk "the
indiscriminate recharacterization as covered employees of professionals working in
supervisory and managerial capacities').

17 *Kentucky River Cmty. Care, Inc.*, 532 U.S. at 715, 121 S. Ct. at 1868. As the United States
18 Supreme Court held: "to wit, that employees do not use 'independent judgment' when they exercise
19 'ordinary professional or technical judgment in directing less-skilled employees to deliver services in
20 accordance with employer-specified standards.' ... The Court of Appeals rejected that interpretation, and
21 so do we." *Id.* at 713. "When an employee exercises one of these functions with judgment that
22 possesses a sufficient degree of independence, the Board invariably finds supervisory status." *Id.* at
23 716. The Court in *Kentucky River Cmty. Care, Inc.* held that "an employee who in the course of
24 employment uses independent judgment to engage in 1 of the 12 listed activities, including responsible
25 direction of other employees, is a supervisor." *Kentucky River Cmty. Care, Inc.*, 532 U.S. at 717.

26 The Board finds that the Sergeants do possess the authority of supervisory employees described
27 in NRS 288.075(1)(a). The Sergeants have the authority to exercise limited disciplinary action
28 including oral and written reprimands and emergency suspensions, regarding those they supervise.

1 Furthermore, the Sergeants have the responsibility to direct and supervise as well as the duty to
2 schedule and assign tasks to those they supervise. The Sergeants serve as the immediate commanding
3 officer of the patrolmen and patrolwomen on their shift. The Sergeants have a duty to evaluate the work
4 of those they supervise and are primarily responsible for monitoring and controlling their actions. They
5 are required to use their knowledge of supervision to recommend corrective action as well as to be
6 assigned as the investigator of alleged misconduct. Furthermore, Sergeants are expected to exercise
7 these supervisory duties throughout every day they are on the job. "Significant" is defined as
8 "important; of consequence". *Significant*, Merriam-Webster's Dictionary (2018).

9 Chief Reed testified that the job descriptions of the Sergeants are indeed accurate in practice.
10 Sergeants are given broad latitude throughout the work day to accomplish these tasks. The Sergeants
11 assign manpower during their shifts and, at the beginning of each shift, assign the duties for the people
12 under their supervision. One of the core functions of the Sergeants is to also review the reports of the
13 patrol officers and evaluate the work of those under their supervision in a variety of ways. The
14 Sergeants are further expected to monitor and supervise the people under their direction throughout the
15 entire shift, which is a fundamental part of their job occurring "all day, every day". The Sergeants are in
16 practice sometimes trainers, mentors, counselors, and disciplinarians, doing so every day (either verbal,
17 such as a supervisor's review in the field, or written). Indeed, reprimands are generally delivered by the
18 sergeants themselves (written or otherwise).

19 Moreover, on cross examination, Chief Reed provided the same unwavering testimony. Further,
20 Chief Reed provided percentages on cross regarding the duties and percentages spent occupying the
21 portion of workday related thereto. As before, Chief Reed indicated that rewarding and discipline are
22 very common and daily. The Sergeants direct the officers all day and every day, including the
23 responsibility for assigning work duties of the people under their control. Sgt. Pepper even agreed, on
24 cross, that they at least meet one of the criteria (direct) pursuant to the subject statute.

25 The Board finds the testimony of Chief Reed credible. Further, as Chief Reed explained, there
26 are potential problems and inherent conflicts of interest in having a supervisor in the same unit as the
27 employees they supervise. Sgt. Pepper further agreed, on cross examination, to these inherent conflicts.

28 ...

1 As such, the Board finds that the Sergeants at least possess 1 of the 12 criteria detailed in NRS
2 288.075(1)(a) doing so with independent judgment, in the interest of their employer, occupying a
3 significant portion of their workday (including assigning, rewarding or disciplining, and the
4 responsibility to direct).

5 The Board notes that the testimony in this case showed the Sergeants indeed actually performed
6 those functions or duties given to them on paper. As detailed above, the testimony revealed that the
7 Sergeants have significant supervisory authority in the interest of their employer which requires the use
8 of independent judgment occupying a significant portion of their workday. The Board finds that the
9 Sergeants are supervisory employees as defined in NRS 288.075(1)(a) and must be excluded from the
10 bargaining unit of the employees they direct pursuant to the plain language of NRS 288.170(3).

11 The City proposed an efficient means of having the Sergeants continue under a parallel but
12 separate CBA and offered to allow joint negotiations per NRS 288.170(3). The City was simply trying to
13 comply with the legislative requirements that a supervisory employee must not be a member of the same
14 bargaining unit as the employee under their direction mandated by NRS 288.170(3).

15 Finally, based on the facts in this case and the issues presented, the Board declines to award
16 costs and fees in this matter.

17 **FINDINGS OF FACT**

18 1. The current job description of the Sergeants provides, in pertinent part, that a Sergeant
19 “[e]xercises direct supervision over the positions of Corporal, Patrol Officers in the classifications of
20 Patrol Officer III, Patrol Officer II, and Patrol Officer I.”

21 2. One of the essential duties of a Sergeant is to “[s]chedule manpower, review all reports
22 from patrolmen, evaluate the work of patrolmen.”

23 3. As the direct supervisor over the officers, the Sergeants also have a significant role in
24 disciplinary actions related to them.

25 4. While the Chief of Police is the final authority on all Department employee discipline,
26 the supervisors play a significant role in the disciplinary process.

27 5. If the Board were to require all 12 of the criteria to be met in order for the exclusion to
28 apply, an employee that had the right to hire, transfer, suspend, promote, and discharge employees, but

1 not the right to recall employees, would not be considered a “supervisory” employee, for example.

2 6. If final authority was read into the statute as being required, then the Chief of Police may
3 have been deemed as the only supervisory employee (or to its logical end, not even the Chief of Police).

4 7. Sergeants have to take corrective actions as part of their job duty, and they handle a lot of
5 things on the fly every single day that are minor in disciplinary.

6 8. The Sergeants have the authority to exercise limited disciplinary action including oral
7 and written reprimands and emergency suspensions, regarding those they supervise.

8 9. The Sergeants have the responsibility to direct and supervise as well as the duty to
9 schedule and assign tasks to those they supervise.

10 10. The Sergeants serve as the immediate commanding officer of the patrolmen and
11 patrolwomen on their shift.

12 11. The Sergeants have a duty to evaluate the work of those they supervise and are primarily
13 responsible for monitoring and controlling their actions.

14 12. They are required to use their knowledge of supervision to recommend corrective action
15 as well as to be assigned as the investigator of alleged misconduct.

16 13. Sergeants are expected to exercise these supervisory duties throughout every day they are
17 on the job.

18 14. The job descriptions of the Sergeants are indeed accurate in practice.

19 15. Sergeants are given broad latitude throughout the work day to accomplish these tasks.

20 16. The Sergeants assign manpower during their shifts and, at the beginning of each shift,
21 assign the duties for the people under their supervision.

22 17. One of the core functions of the Sergeants is to also review the reports of the patrol
23 officers and evaluate the work of those under their supervision in a variety of ways.

24 18. The Sergeants are further expected to monitor and supervise the people under their
25 direction throughout the entire shift, which is a fundamental part of their job occurring “all day, every
26 day”.

27 19. The Sergeants are in practice sometimes trainers, mentors, counselors, and
28 disciplinarians, doing so every day.

1 20. Rewarding and discipline are very common and daily.

2 21. The Sergeants direct the officers all day and every day, including the responsibility for
3 assigning work duties of the people under their control.

4 22. The Board finds the testimony of Chief Reed credible.

5 23. There are potential problems and inherent conflicts of interest in having a supervisor in
6 the same unit as the employees they supervise.

7 24. Sergeants have significant supervisory authority in the interest of their employer which
8 requires the use of independent judgment occupying a significant portion of their workday.

9 25. If any of the foregoing findings is more appropriately construed as a conclusion of law, it
10 may be so construed.

11 CONCLUSIONS OF LAW

12 1. The Board is authorized to hear and determine complaints arising under the Local
13 Government Employee-Management Relations Act.

14 2. The Board has exclusive jurisdiction over the parties and the subject matters of the
15 Complaint on file herein pursuant to the provisions of NRS Chapter 288.

16 3. Generally, when a statute's language is plain and its meaning clear, the courts will apply
17 that plain language.

18 4. However, where a statute has no plain meaning, a court should consult other sources
19 such as legislative history, legislative intent and analogous statutory provisions.

20 5. NRS 288.075(1)(a) plainly and unambiguously requires only 1 of the 12 criteria to be
21 shown.

22 6. The statute clearly uses the word "or" and not "and".

23 7. The word 'or' is typically used to connect phrases or clauses representing alternatives.
24 Moreover, courts presume that 'or' is used in a statute disjunctively unless there is clear legislative
25 intent to the contrary.

26 8. The legislative history, intent, and analogous statutory provisions further dictates this
27 result.

28 9. The intent of the EMRA is to apply the governing principles of the NLRA to Nevada's

1 local government employees.

2 10. *N.L.R.B. v. Kentucky River Cmty. Care, Inc.*, 532 U.S. 706, 710–11, 121 S. Ct. 1861,
3 1866, 149 L. Ed. 2d 939 (2001) is persuasive and controlling in this matter.

4 11. The NLRA has the exact same definition of a “supervisor” as in NRS 288.075(1)(a).

5 12. The additional line to the end of the identical definition in NRS 288.075(1)(a) is to
6 ensure that supervisory authority was an authentic grant of supervisory authority and to guard against
7 the practice of an employer creating a “straw boss” as a ruse to avoid collective bargaining obligations.

8 13. Nothing in the legislative history indicates that this additional sentence was intended to
9 require the employees to meet all of the criteria in subsection (1)(a) of NRS 288.075, but instead was
10 added as a requirement based on the foregoing rational.

11 14. The Acts are substantially similar, and the EMRA does not reflect a contrary legislative
12 intent in this regard.

13 15. No portion of a statute should be rendered meaningless nor should it be interpreted to
14 produce an absurd or unreasonable result.

15 16. The statute does not provide that the subject supervisor has to be the final authority in
16 order to be able to discipline per the statute.

17 17. Statutory construction rules apply the plain meaning of words, and “discipline” simply
18 means “to punish”.

19 18. The statute plainly requires that they have the “authority in the interest of the employer”
20 to do so, not the final authority.

21 19. The statutory section at issue would be rendered meaningless or produce an unreasonable
22 result if the Board were to follow the Association’s interpretations in this case.

23 20. The Sergeants possess the authority of supervisory employees described in NRS
24 288.075(1)(a).

25 21. The Sergeants at least possess 1 of the 12 criteria detailed in NRS 288.075(1)(a) doing so
26 with independent judgment, in the interest of their employer, occupying a significant portion of their
27 workday (including assigning, rewarding or disciplining, and the responsibility to direct).

22. The Sergeants are supervisory employees as defined in NRS 288.075(1)(a) and must be excluded from the bargaining unit of the employees they direct pursuant to the plain language of NRS 288.170(3).

23. If any of the foregoing conclusions is more appropriately construed as a finding of fact, it may be so construed.

ORDER

Based on the foregoing, it is hereby ordered that the Board finds that the Sergeants are supervisory employees as defined in NRS 288.075(1)(a) and must be excluded from the bargaining unit of the employees they direct pursuant to the plain language of NRS 288.170(3).

DATED this 29 day of August, 2018.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: BRENT ECKERSLEY, ESQ., Chair
and Presiding Officer

By: Sandra Masters
SANDRA MASTERS, Vice-Chair

By: GARY COTTINO
GARY COTTINO, Board Member

FILED

AUG 29 2018

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

CITY OF ELKO,

Petitioner,

v.

THE ELKO POLICE OFFICERS PROTECTIVE
ASSOCIATION, NEVADA OF PUBLIC SAFETY
OFFICER COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO, LOCAL 9110,

Respondents.

CASE NO. 2017-026

NOTICE OF ENTRY OF ORDER

To: Petitioner City of Elko by and through their attorneys Procter Hug, Esq. and Maupin Cox Legoy;

To: Respondents Elko Police Officers Protective Association and NAPSO, CWA, AFL-CIO by and through their representative, Richard P. McCann, JD.

PLEASE TAKE NOTICE that the **ORDER** was entered in the above-entitled matter on August 29, 2018.

A copy of said order is attached hereto.

DATED this 29th day of August 2018.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


MARISU ROMUALDEZ ABELLAR
Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 29 day of August, 2018, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

Procter J. Hug, Esq.
Maupin Cox Legoy
4785 Caughlin Parkway
Reno, NV 89519

RICHARD P. McCANN, J.D.
Executive Director
NEVADA ASSOCIATION OF PUBLIC SAFETY OFFICERS
(CWA Local 9110, AFL-CIO)
145 Panama Street
Henderson, NV 89015


MARISU ROMUALDEZ ABELLAR
Executive Assistant