	FILED			
	JUN 2 2 2022			
1	STATE OF NEVADA E.M.R.B.			
2	STATE OF NEVADA			
3	GOVERNMENT EMPLOYEE-MANAGEMENT			
4	RELATIONS BOARD			
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6	IN RE: Case No. 2021-009			
7	PETITION FOR DECLARATORY ORDER Panel E CONCERNING UNIT I PURSUANT TO NRS			
8	288.515 NOTICE OF ENTRY OF ORDER			
9	<u>ITEM NO. 878</u>			
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11				
12	TO: Petitioner AFSCME Local 4041 and its attorney, Fernando R. Colon, Esq., Associate General			
13	Counsel, American Federation of State, County and Municipal Employees; and			
14	TO: State of Nevada, Nevada Division of Human Resource Management and its attorneys, Greg Ott,			
15	Chief Deputy Attorney General and Lisa F. Evans, Deputy Attorney General.			
16	PLEASE TAKE NOTICE that the ORDER DENYING AFSCME'S PETITION TO			
17	INCLUDE THE JOB CLASSIFICATION OF CORRECTIONAL SERGEANTS IN UNIT I:			
18	CATEGORY III PEACE OFFICERS was entered in the above-entitled matter on June 22, 2022.			
19	A copy of said order is attached hereto.			
20	DATED this 22 day of June 2022.			
21	GOVERNMENT EMPLOYEE-			
22	MANAGEMENT RELATIONS BOARD			
23	BY Are			
24	MARISU ROMUALDEZ ABELLAR Executive Assistant			
25	Executive Assistant			
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3	CERTIFICATE OF MAILING		
4	I hereby certify that I am an employee of the Government Employee-Management Relations		
5	Board, and that on the 22 day of June 2022, I served a copy of the foregoing NOTICE OF ENTRY		
6	OF ORDER by mailing a copy thereof, postage prepaid to:		
7	Fernando R. Colon		
8	Associate General Counsel		
9	AFSCME Office of the General Counsel 1101 17 th Street NW, Suite 900		
10	Washington, D.C. 20036		
11	Greg Ott, Chief Deputy AG Lisa Frey Evans, DAG		
12	State of Nevada Office of the Attorney General		
13	100 North Carson Street		
14	Carson City, NV 89701-4717		
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16	MARISU ROMUALDEZ ABELLAR		
17	Executive Assistant		
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7	IN RE:	Case No. 2021-009			
8	PETITION FOR DECLARATORY ORDER CONCERNING UNIT I PURSUANT TO NRS	Panel E			
9	288.515	ORDER DENYING AFSCME'S PETITION			
10		TO INCLUDE THE JOB CLASSIFICATION OF CORRECTIONAL			
11		SERGEANTS IN UNIT I: CATEGORY III PEACE OFFICERS			
12		ITEM NO. 878			
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15	On March 8 and 9, 2022, this matter came before Panel E of the State of Nevada, Government				
16	Employee-Management Relations Board (the "Board") for consideration and decision pursuant to the				
17	provisions of the Government-Management Relations Act, NRS Chapter 288 (the "Act") and NAC				
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19	Order Concerning Unit I Pursuant to NRS 288.515 ("Petition"). The Nevada Department of				
20	Administration, Division of Human Resource	es Management, Labor Relations Unit (the "State")			
21	opposed the Petition. After receiving post hearing briefs from AFSCME and the State, the Board				
22	deliberated and decided to deny the Petition on June 15, 2022.				
23	AFSCME's Petition was filed with the Board on September 2, 2021. AFSCME requested an				
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AFSCME'S Petition was filed with the Board on September 2, 2021. AFSCME requested an
 order from the Board to determine that the job classification of Correctional Sergeant is not supervisory
 and thus instead belongs in bargaining unit "T" Category III Peace Officers. Correctional Sergeants
 within the State's Department of Corrections are currently in bargaining unit "J" for supervisors. The
 State submitted its opposition to the Petition on September 23, 2021. The issue presented in this case is
 whether Correctional Sergeants are "supervisory employees" under NRS 288.138.

1 In 2018, this Board decided a case regarding the Elko Police Department Sergeants and whether 2 they were supervisory employees pursuant to NRS 288.075(1)(a) (now NRS 288.138)¹ (Case No. 2017-3 026, Item No. 831) (the "City of Elko"). In City of Elko, the Board determined that supervisors need only meet one of the 12 criteria listed in NRS 288.138. The City of Elko decision is consistent with the 4 5 language of the statute as well as the National Labor Relations Act from which the definition is 6 modeled. See N.L.R.B. v. Kentucky River Cmty. Care, Inc., 532 U.S. 706, 710-11 (2001). The Board 7 applies the three-part test from Kentucky River to determine whether an employee meets the definition 8 of supervisory employee. Employees are supervisors if (1) they hold the authority to engage in any 1 of 9 the 12 listed supervisory functions, (2) their "exercise of such authority is not of a merely routine or 10 clerical nature, but requires the use of independent judgment," and (3) their authority is held "in the 11 interest of the employer." Kentucky River, 532 U.S. at 712-13. In addition, as required by Nevada law, 12 the supervisory authority must occupy a significant portion of the employee's workday.

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FINDINGS OF FACT

After consideration of the evidence presented by the parties at the 2-day hearing and after consideration of the documents and briefs on file herein, the Board finds by a preponderance of the evidence that the following findings of fact are proven.

The State stipulated that Correctional Sergeants do not have authority to hire, transfer,
 suspend, layoff, recall, promote or discharge.

According to the State's class specification for Correctional Sergeant, employees in this
 position work "in a line supervisory capacity and have charge of an assigned watch or major area in a
 State correctional institution/facility and supervise work of subordinate officers in the safe custody,
 discipline and welfare of inmates in State correctional facilities in a controlled humane environment."

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3. AFSCME presented evidence of the pandemic's effect on the Correctional Sergeants' position and duties.

4. While Correctional Sergeants may be asked to perform the job duties of an officer and
may not have officers to assign or direct at any given time due to staffing shortages within a facility,
these changes in assignment are temporary, are not consistent with every Correctional Sergeant at all

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¹ NRS 288.075 was replaced in revision by NRS 288.138.

facilities and regardless of assignment, all Correctional Sergeants are required to direct officers to
 correct a deficiency if observed.

5. Correctional Sergeants are assigned to a variety of posts, including, without limitation,
desk/shift sergeant, housing sergeant, and property sergeant, but post assignments can change at the
discretion of the warden based on the needs of the facility.

6 6. According to the testimony of AFSCME's witness, Lieutenant Aaron Harroun, he was
7 responsible for the direct supervision of 32 to 38 officers as a shift sergeant and 6 to 8 officers as a
8 housing sergeant.

9 7. Lieutenant Harroun testified that he was responsible for making sure officers followed
10 policies and procedures and was responsible for evaluating the performance of officers under his direct
11 supervision.

8. AFSCME's witness, Sergeant Brandon Silva, testified that as a housing sergeant he was
responsible for training to make sure the correctional officers know what they are supposed to be doing
and making sure his staff are doing their jobs properly.

9. While there are multiple posts a Correctional Sergeant may be assigned to, the position
of Correctional Sergeant as a whole class is considered and not what post each of the 76 Correctional
Sergeants are assigned to at any given time.

18 10. Correctional Sergeants assign shifts, assign overtime, approve time sheets, and assign
19 officers to various positions.

20 11. Correctional Sergeants have the authority to direct other staff to transport, to conduct
21 cell and inmate searches, to work on extraction teams, and they are responsible for making sure the
22 officers are performing their duties as assigned.

12. Correctional Sergeants have the responsibility to complete performance evaluations of
 officers, provide on the job training to staff and issue performance cards to corrections officers for
 positive and corrective feedback.

26 13. Correctional Sergeants have the responsibility to direct subordinate officers to correct
27 conduct that falls below standard policies.

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14. Correctional Sergeants have authority to give verbal warnings and letters of reprimand.

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1	15. (Correctional Sergeants have a responsibility to direct the work of subordinate officers	
2	and address deficiencies by subordinate officers throughout their shift regardless of their assigned post.		
3	16. 7	There are potential problems and inherent conflicts of interest in having a supervisor in	
4	the same unit as	s the employees they supervise.	
5	17. 0	Correctional Sergeants have significant supervisory authority in the interest of their	
6	employer which requires independent judgment occupying a significant portion of their workday.		
7	18. I	f any of the foregoing findings is more appropriately construed as a conclusion of law,	
8	it is so construe	d.	
9		CONCLUSIONS OF LAW	
10	Based o	n the evidence presented at the hearing and the foregoing Findings of Fact, the Board	
11	finds the follow	ring Conclusions of Law.	
12	1. 7	The Board shall determine the classifications of classified State employees within each	
13	bargaining unit pursuant to NRS 288.515(2).		
14	2. 7	The State has the burden to prove by a preponderance of the evidence that Correctional	
15	Sergeants are supervisors pursuant to NRS 288.138.		
16	3. 7	The Board's legal reasoning in City of Elko is controlling and incorporated herein by	
17	reference.		
18	4. (Correctional Sergeants possess the authority of supervisory employees described in NRS	
19	288.138(1)(a).		
20	5. (Correctional Sergeants possess at least one of the 12 criteria detailed in NRS	
21	288.138(1)(a) d	doing so with independent judgment, in the interest of their employer, occupying a	
22	significant por	tion of their workday (including assigning, rewarding or disciplining, and the	
23	responsibility to	o direct).	
24	6. (Correctional Sergeants are supervisory employees as defined in NRS 288.138(1)(a) and	
25	belong in barga	ining unit "J" pursuant to NRS 288.515(1).	
26	7. 1	If any of the foregoing conclusions is more appropriately construed as a finding of fact,	
27	it may be so con	nstrued.	
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1	ORDER
2	Based on the foregoing, the Board finds that Correctional Sergeants are supervisory employees
3	under NRS 288.138(1)(a) and are appropriately placed in bargaining unit "J" pursuant to NRS 288.515.
4	The Petition is denied.
5	Dated this 22 day of June 2022.
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7	GOVERNMENT EMPLOYEE- MANAGEMENT RELATIONS BOARD
8	Fithelice
9 10	By: BRENT ECKERSLEY, ESQ., Chair and Presiding Officer
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12	By:
13	SANDRA MASTERS, Vice-Chair
14	By: Say A. Collins
15	GARY COTTINO, Board Member
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