

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

IN RE:
PETITION FOR DECLARATORY ORDER
CONCERNING UNIT I PURSUANT TO NRS
288.515

Case No. 2021-009
Panel E
NOTICE OF ENTRY OF ORDER
ITEM NO. 878

TO: Petitioner AFSCME Local 4041 and its attorney, Fernando R. Colon, Esq., Associate General Counsel, American Federation of State, County and Municipal Employees; and
TO: State of Nevada, Nevada Division of Human Resource Management and its attorneys, Greg Ott, Chief Deputy Attorney General and Lisa F. Evans, Deputy Attorney General.

PLEASE TAKE NOTICE that the **ORDER DENYING AFSCME'S PETITION TO INCLUDE THE JOB CLASSIFICATION OF CORRECTIONAL SERGEANTS IN UNIT I: CATEGORY III PEACE OFFICERS** was entered in the above-entitled matter on June 22, 2022.

A copy of said order is attached hereto.

DATED this 22 day of June 2022.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


MARISU ROMUALDEZ ABELLAR
Executive Assistant

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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 22 day of June 2022, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

Fernando R. Colon
Associate General Counsel
AFSCME Office of the General Counsel
1101 17th Street NW, Suite 900
Washington, D.C. 20036

Greg Ott, Chief Deputy AG
Lisa Frey Evans, DAG
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717



MARISU ROMUALDEZ ABELLAR
Executive Assistant

FILED

JUN 22 2022

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

IN RE:

PETITION FOR DECLARATORY ORDER
CONCERNING UNIT I PURSUANT TO NRS
288.515

Case No. 2021-009

Panel E

**ORDER DENYING AFSCME'S PETITION
TO INCLUDE THE JOB
CLASSIFICATION OF CORRECTIONAL
SERGEANTS IN UNIT I: CATEGORY III
PEACE OFFICERS**

ITEM NO. 878

On March 8 and 9, 2022, this matter came before Panel E of the State of Nevada, Government Employee-Management Relations Board (the "Board") for consideration and decision pursuant to the provisions of the Government-Management Relations Act, NRS Chapter 288 (the "Act") and NAC Chapter 288. At issue was Petitioner AFSCME Local 4041's ("AFSCME") Petition for Declaratory Order Concerning Unit I Pursuant to NRS 288.515 ("Petition"). The Nevada Department of Administration, Division of Human Resources Management, Labor Relations Unit (the "State") opposed the Petition. After receiving post hearing briefs from AFSCME and the State, the Board deliberated and decided to deny the Petition on June 15, 2022.

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 "I" 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
4 only meet one of the 12 criteria listed in NRS 288.138. The *City of Elko* decision is consistent with the
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.

13 **FINDINGS OF FACT**

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

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

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

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

25 4. While Correctional Sergeants may be asked to perform the job duties of an officer and
26 may not have officers to assign or direct at any given time due to staffing shortages within a facility,
27 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.

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

3 5. Correctional Sergeants are assigned to a variety of posts, including, without limitation,
4 desk/shift sergeant, housing sergeant, and property sergeant, but post assignments can change at the
5 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.

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

15 9. While there are multiple posts a Correctional Sergeant may be assigned to, the position
16 of Correctional Sergeant as a whole class is considered and not what post each of the 76 Correctional
17 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.

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

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

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

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ORDER

Based on the foregoing, the Board finds that Correctional Sergeants are supervisory employees under NRS 288.138(1)(a) and are appropriately placed in bargaining unit "J" pursuant to NRS 288.515. The Petition is denied.

Dated this 22 day of June 2022.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

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

By: 
SANDRA MASTERS, Vice-Chair

By: 
GARY COTTINO, Board Member