

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEIGHWYNN HOWELL,)
)
 Petitioner,)
)
 vs.) Case No. 01-1007
)
 EVERETT S. RICE, PINELLAS)
 COUNTY SHERIFF,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER OF DISMISSAL

Pursuant to notice, this cause came on for formal hearing before Fred L. Buckine, a duly-appointed Administrative Law Judge of the Division of Administrative Hearings on August 16, 2001, in Largo, Florida.

APPEARANCES

For Petitioner: Keith C. Tischler, Esquire
Powers, Quaschnick, Tischler,
Evans & Dietzen
1669 Mahan Center Boulevard
Post Office Box 12186
Tallahassee, Florida 32317-2186

For Respondent: Darryl E. Rouson, Esquire
3737 Central Avenue
St. Petersburg, Florida 33713-8338

STATEMENT OF THE ISSUE

The issue in this cause is whether Respondent engaged in conduct while on duty in violation of Pinellas County Sheriff's

Office Civil Service Act, Laws of Florida, 89-404, as amended by Laws of Florida, 90-395, Section 6, subsection 4: (1) conduct unbecoming a public servant; and (2) sexual harassment and discrimination.

PRELIMINARY STATEMENT

This matter began when Petitioner received an anonymous letter alleging knowledge that a sergeant, assigned the Third Shift, North Division, who had previously been moved because of a sexual harassment charge, was engaged in inappropriate behavior with deputies and female inmates. The anonymous letter was given to the Administrative Investigation Division (AID) for investigation, which resulted in charges filed against Respondent and presented to the Administrative Review Board (ARB). The ARB determined that Respondent had, in fact, engaged in the alleged misconduct. The ARB recommended, and Sheriff Rice approved, the demotion of Respondent from sergeant to corporal, a 15-day suspension without pay, and a change of shift assignment. Respondent filed a timely appeal on March 12, 2001, and the Initial Order was issued on March 13, 2001. Petitioner's first Motion for Continuance was filed on April 16, 2001, and an Order Granting Continuance was issued on May 16, 2001.

On August 8, 2001, the parties filed their Joint Pre-Hearing Statement wherein Petitioner listed 12 witnesses in

addition to Respondent's witnesses, and Respondent listed 36 witnesses and 54 exhibits. On August 15, 2001, Petitioner filed its second Motion to Continue the final hearing that was heard and denied at the final hearing on August 16, 2001.

At the final hearing and prior to opening the record for testimony, the undersigned conferred with counsel regarding the intended schedule for witnesses' testimony.

Both counsel requested a conference with their respective clients. Approximately two hours later, counsel announced that they had reached a settlement agreement, in principle, needing only the final approval of Sheriff Rice. The record was opened and counsel announced their settlement agreement terms and conditions on the record.

On August 31, 2001, the parties filed their Joint Stipulated Settlement Agreement and their executed General Release and Waiver of Right to Sue. In their Joint Settlement Agreement, the parties requested entry of an order affirming the terms of this Joint Stipulated Agreement and dismissing this appeal.

FINDINGS OF FACT

1. As noted above in the Preliminary Statement, the parties have entered a Joint Settlement Agreement and General Release and Waiver of Right to Sue. Their agreement, in pertinent part, includes the following:

1. The demotion of Petitioner from sergeant to detention deputy shall remain in full force and effect as previously imposed by Respondent.

2. The fifteen-day suspension imposed upon Petitioner as discipline . . . shall be reduced to a ten-day suspension. Respondent shall reimburse Petitioner for five days of back pay as a result of the reduced suspension, including any benefits associated with such pay and the deduction of all required taxes and contributions.

3. Petitioner shall execute a full release of all claims against Respondent up to and including the date of the execution of the release.

4. Each party shall bear his own attorney's fees and costs.

2. The parties' Joint Stipulated Settlement Agreement and General Release and Waiver of Right to Sue constitute an informal disposition of all disputed issues of material facts in this proceeding.

CONCLUSIONS OF LAW

3. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this cause pursuant to Chapters 120, Florida Statutes, and Laws of Florida, 89-404, as amended by Laws of Florida, 90-395.

4. Section 120.57(4), Florida Statutes, provides as follows:

(4) INFORMAL DISPOSITION: Unless precluded by law, informal disposition may be made of

any proceeding by stipulation, agreed settlement, or consent order.
(emphasis supplied.)

5. Here, the parties have informally disposed of all disputed issues of material fact by entering a Joint Stipulated Settlement Agreement and a joint General Release and Waiver of Right to Sue. The language of the underscored above requires entry of an order "adopting the agreed settlement."

6. Consistent with Section 120.57(4), Florida Statutes, it is hereby RECOMMENDED:

That the Petition filed in the cause by Leighwynn Howell against Everett S. Rice, in his official capacity as Sheriff of Pinellas County, Florida, be DISMISSED with prejudice.

DONE AND ENTERED this 21st day of September, 2001, in Tallahassee, Leon County, Florida.

FRED L. BUCKINE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of September, 2001.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order must be filed with the agency that will issue the Final Order in this case.