

IN RE

**THE PERSONNEL BOARD HEARING
OF
RICHARD GARDNER**

COUNTY MANAGER'S DECISION

Pursuant to Volusia County Merit Rules and Regulations, section 86-485(g), I have considered the findings of fact and advisory decision of the Personnel Board in the above referenced matter. I have personally reviewed the entire record of the Personnel Board proceedings in this case, held on April 12 and 13, 2012, including the written transcript of the deliberations and findings, and I have listened to the oral recording of the hearing.

The Personnel Board is required under section 86-485(f)(7) "to transmit its findings and advisory decision to the county manager for review and final decision within seven calendar days of the completion of the hearing or review." I have timely received the above findings and advisory decision of the Personnel Board and have given both due consideration.

The Personnel Board has two responsibilities. The first is to determine whether employee wrongdoing is established by substantial evidence. The second is to recommend whether the punishment assessed by the appointing authority should be upheld or modified. Personnel Board hearing procedures require that the Board make clear findings of fact and conclusions and an advisory decision to the county manager for the final decision.

Appellant was dismissed for incidents which were determined by the Director of Public Protection to have violated the following: Merit Rules and Regulations, section 86-453, specifically: violation of any reasonable or official order, conduct which interferes with effective job performance

or has an adverse effect on the efficiency of county service; unsatisfactory performance of duties; knowingly giving false statements to supervisors; any conduct, on or off duty, that reflects unfavorably on the county as an employer and any other conduct of such seriousness that disciplinary action is warranted; section 86-45, code of conduct and Division of Beach Safety Policy and Procedure 11.01.05, neglect of duty.

The Personnel Board sustained the finding that Appellant had violated Merit Rule 86-453, section (13), any conduct, on or off duty, that reflects unfavorably on the County as an employer but did not sustain the remaining grounds for termination. In its discussion of this finding, the Board focused on the conduct of Appellant, a senior law enforcement officer within the Beach Services Division, "actively" choosing to engage in two intimate relationships with subordinate/probationary law enforcement employees, one relationship of a long duration, and the fact that those relationships reflected unfavorably on the County as an employer. The Board specifically discussed the basic premise of sexual harassment training and education, noting that most have been through such training, and that "this sort of thing" (superiors engaging in intimate relationships with subordinates) is addressed. The Board noted that relationships such as Appellant's with subordinates could create a "huge exposure to liability" for the County. It was noted that Appellant, as a senior member of the agency, knew or should have known that he should not have engaged in such relationships in light of the impact such relationships may have had on other members of the department, particularly the younger employees of the Beach Services Division for whom this may be their first job. The Personnel Board's advisory recommendation was to modify the punishment assessed by the appointing authority in this case.

I note that in its deliberations, the Personnel Board discussed the County's lack of certain

written policies. While I acknowledge and respect the Board's concerns, I feel compelled to point out that it would be impossible to enact rules to govern every situation an employee will face. Further, the lack of a specific written standard of conduct addressing a particular act or manner of behavior does not mean that such an act or behavior is permissible or condoned or will not result in disciplinary action. The directive violation sustained by the Personnel Board in this case governs such situations. Volusia County Merit Rule, section 86-453 provides that a violation of subsection (13) will be a sufficient ground for disciplinary action ranging from oral reprimand to dismissal, "depending on the seriousness of the offense and other circumstances related to the situation." The Personnel Board determined that Appellant had violated this subsection and based its finding, as noted above, on Appellant's conduct as it related to his relationships with subordinate probationary officers, Cara Gittner and Paige Winters.

A review of the totality of the information and evidence presented to the Personnel Board established that Appellant held a position of great trust and authority in the Beach Services Division. He was not an entry level employee or a line level officer. He was a law enforcement supervisor of many years and served as one of the highest ranking officers in the organization, at times having authority over the entire Beach Services Division when serving as the acting deputy chief. He was a member of the management team of the organization and, as such, was held to a standard of conduct commensurate with such a position. Further, a paramilitary organization, such as that in which Appellant served, has a special need to be aware of relationships between supervisors and subordinates due to the potential such relationships have to impact the morale, discipline and reputation of the entity.

Despite Appellant's clear position of authority in the organization and the standard of conduct

he knew he was expected to demonstrate, he knowingly engaged in a long term intimate relationship with Officer Gittner which commenced during her probationary period. During the course of this relationship, records presented established that, despite his claims to the contrary, Appellant supervised Officer Gittner when she performed investigations under his command or worked certain outside details. On the heels of ending the affair with Officer Gittner, he commenced a sexual relationship with another probationary subordinate, Officer Winters.

Evidence presented demonstrated that Appellant's relationships with these subordinates impacted the division. There were widespread rumors within the division about Appellant's relationship with Officer Gittner and there was a perception that Officer Gittner received favorable treatment when, among other things, she routinely performed investigatory duties under Appellant's direct supervision.

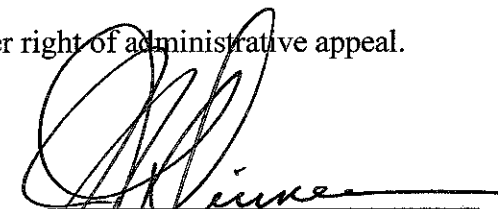
It is my conclusion that, considering Appellant's level of responsibility in the organization and his training, he had an affirmative duty to disclose these relationships to his supervisor; yet, he purposely hid them and, in doing so, whether explicitly or implicitly, encouraged both subordinates to do the same. His failure to do so shows an egregious lack of forthrightness. That, coupled with his admission that he could affect the employment of these officers, created a potential abuse of power that would have been detrimental in any workplace much less in the quasi-military organization in which Appellant worked. Moreover, based upon the totality of the record evidence, I believe his judgment as a supervisor was clearly compromised.

I want to be clear that my decision in this matter is not based on Appellant's off-duty personal relationships. My decision is based on Appellant's position as a law enforcement officer, supervisor and a senior member of the management team, and evidence which established that his intimate

association with subordinate employees compromised his judgment and created a perception of favoritism within the organization, all of which reflected unfavorably on the County. Further, Appellant's actions undoubtedly exposed the County to liability, and, given his tenure with the Division, he simply knew or should have known better.

In conclusion, I have decided to accept the recommendation of the Personnel Board not to terminate Appellant from employment. However, based on the totality of the evidence, including his own admissions which demonstrate an inability to supervise¹, his lack of contrition and outright failure to acknowledge or recognize the impact of his actions on his workplace, I have determined that the following disciplinary action is appropriate. Appellant will be demoted from the position of Beach Services Captain and will underslot a corrections officer position at the classification level for which he is qualified. He will serve a suspension from January 13, 2012 to his reinstatement date of April 13, 2012. He will be required to successfully complete training in the areas of ethics, sexual harassment and hostile work environment. In accordance with Volusia County Merit Rule, section 86-485(g)(4), this decision is final with no further right of administrative appeal.

Dated this 3 day of May, 2012.



James T. Dinneen
County Manager

cc: Beach Service Administration
Department of Public Protection
County Personnel
County Legal
Richard Gardner
Jonathan D. Kaney, III, Esq.
Abraham McKinnon, Esq.

¹ I note that when asked about his duties as acting deputy chief, Appellant provided sworn testimony that conflicted with that of other witnesses in an apparent attempt to minimize his authority when acting in that capacity. His apparent lack of understanding of his responsibilities when in an acting supervisory position is but one example which concerns me regarding his ability to perform the duties of a supervisor.