



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 16, 2018

CASE NUMBER: 2016OPA-0719

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.120 - Secondary Employment IV. Secondary Employment Permit (form 1.30)	Not Sustained (Management Action)
# 2	5.120 - Secondary Employment II. Responsibilities I. All employees working off-duty or secondary employment must be equipped with their portable radio and shall log in with radio	Not Sustained (Training Referral)
# 3	5.001 - Standards & Duties 9. Employee Shall Strive to be Professional at all Times	Not Sustained (Inconclusive)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.120 - Secondary Employment IV. Secondary Employment Permit (form 1.30)	Not Sustained (Management Action)
# 2	5.120 - Secondary Employment II. Responsibilities I. All employees working off-duty or secondary employment must be equipped with their portable radio and shall log in with radio	Not Sustained (Training Referral)
# 3	5.001 - Standards & Duties 9. Employee Shall Strive to be Professional at all Times	Not Sustained (Inconclusive)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

An anonymous complainant alleged that one of the Named Employees who was directing traffic was rude and unprofessional, embarrassing him in front of his family. While researching who was the officer described by the anonymous complainant, OPA discovered possible violations of policy for both Named Employees’ failures to log in and out with radio when working secondary employment and that neither had a secondary work permit.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.120 - Secondary Employment IV. Secondary Employment Permit (form 1.30)

SPD policy requires officers who seek secondary employment to fill out a secondary employment form and mandates that the form be approved by the employee’s chain of command and by the captain of the precinct in



which the work is to occur. (See SPD Policy 5.120(IV)(C) – (D).) The employee may only perform the secondary work authorized by the permit. (See SPD Policy 5.120(IV)(E).) Permits last for one year, after which they expire. (See SPD Policy 5.120(IV)(F).) If an employee seeks to continue secondary work, the employee must submit a new permit for approval. (See *id.*) Notably, “[e]mployees are responsible for ensuring that their permit is renewed annually and is current.” (See SPD Policy 5.120(IV)(F)(2).)

Here, it is undisputed that both NE#1 and NE#2 did not have a permit for the work they conducted at the Nisei Veterans Committee (NVC). (See NE#1 OPA Interview; see also NE#2 OPA Interview.) NE#1 stated that while he was working off-duty and in uniform, he donated his time. (NE#1 OPA Interview.) NE#2 was also in uniform and also worked off-duty at this event. (NE#2 OPA Interview.) He, like NE#1, indicated that he donated his time. (*Id.*) Based on my review of their statements, it appears that both officers actually received a check for their work, but that they wrote checks for an equal amount to NVC and may not have cashed the checks they received. (See NE#1 OPA Interview; see also NE#2 OPA Interview.) Either way, the evidence suggests that they did not profit from their work.

At his OPA interview, NE#1 indicated that he did not believe that he needed a permit for his work at this event. (NE#1 OPA Interview.) NE#2 appeared to assert that he did need a permit and that he made a mistake in this instance by not having one. (NE#2 OPA Interview.)

Technically, under a strict reading of the policy, even though they were not receiving a financial benefit from this secondary employment, the Named Employees were required to have work permits. The language of the policy discusses secondary employment generally, and does not differentiate between work engaged in on a volunteer basis versus that for which the officers received compensation.

That being said, I think the policy would benefit from clarity in this area. I recommend that the Department revise this policy to make clear that it encompasses all secondary employment, whether or not engaged in for profit.

- **Management Action:** The Department should consider revising this policy to make it clear that a permit is required for secondary employment, even if that secondary employment is engaged in on a volunteer basis or if the officer is not receiving compensation for the work.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #1 - Allegation #2

5.120 - Secondary Employment II. Responsibilities I. All employees working off-duty or secondary employment must be equipped with their portable radio and shall log in with radio

Both NE#1 and NE#2 also admitted that they failed to log in and out of their secondary employment via radio, as is required by policy. (See NE#1 OPA Interview; see also NE#2 OPA Interview.)

Even were the confusion as to whether they needed to have a secondary work permit legitimate, the Named Employees should have known that they were still required to log in and out via radio. This is particularly the case given that they were both in uniform and engaging in activities normally within the purview of law enforcement officers (flagging traffic and security). The Department has a significant interest in knowing when and where its



employees are working off-duty and expects that its employees will comply with this policy in its entirety and in all circumstances.

However, as indicated above, I do not believe that either of the Named Employees acted in bad faith when they failed to log in and out consistent with policy. As such, I find that a training referral rather than a sustained finding is appropriate under the unique facts of this case.

- **Training Referral:** NE#1 should receive additional training concerning this portion of the policy. Specifically, NE#1 should be reminded that he is required to log in and out via radio whenever he is engaging in secondary employment. This re-training and any associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #3

5.001 - Standards & Duties 9. Employee Shall Strive to be Professional at all Times

The anonymous complainant alleged that he was driving his car when he believed that an officer was motioning him to continue driving on 12th Avenue. (OPA Anonymous Complaint Form.) He continued driving in that direction, but he then realized that the officer was directing him to stop and immediately stopped his vehicle. (*Id.*) The officer then stated to him: “What the fuck! Is this not fucking clear!” (*Id.*) The anonymous complainant alleged that the officer stated this loudly and in front of the public and his family. (*Id.*) The anonymous complainant reported feeling embarrassed as a result of the officer’s statements. (*Id.*)

NE#1 was working traffic in that location on the date in question. (NE#1 OPA Interview.) At his OPA interview, NE#1 denied being rude or unprofessional to anyone, and denied embarrassing anyone in front of his family. (*Id.*)

SPD Policy 5.001-POL-9 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-9.)

Aside from NE#1 and the anonymous complainant, there are no identified witnesses to this incident. While NE#2 claimed that he did not hear NE#1 be unprofessional or use profanities, he was not flagging traffic with NE#1 so likely would not have heard the statement. (*See* NE#2 OPA Interview.) Moreover, there is no video or audio recording of the incident. Based on this lack of evidence and the dispute of fact between NE#1 and the anonymous complainant, I cannot make a conclusive determination as to what actually occurred on this date. Accordingly, I recommend that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**



Named Employee #2 - Allegation #1

5.120 - Secondary Employment IV. Secondary Employment Permit (form 1.30)

For the same reason as indicated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Management Action and refer to the Management Action Recommendation above.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #2 - Allegation #2

5.120 - Secondary Employment II. Responsibilities I. All employees working off-duty or secondary employment must be equipped with their portable radio and shall log in with radio

For the same reason as indicated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2 should receive additional training concerning this portion of the policy. Specifically, NE#2 should be reminded that he is required to log in and out via radio whenever he is engaging in secondary employment. This re-training and any associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #3

5.001 - Standards & Duties 9. Employee Shall Strive to be Professional at all Times

As indicated above, NE#1 was responsible for flagging traffic on the date in question. (See NE#1 OPA Interview.) As such, he, not NE#2, was the individual who was involved in any alleged negative interaction with the anonymous complainant.

For this reason, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**