



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2016-1327

Issued Date: 05/08/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 5.002 (11) Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Shall Cooperate with Department Internal Investigations (Policy that was issued January 1, 2015)
OPA Finding	Not Sustained (Training Referral)
Allegation #2	<u>Seattle Police Department Manual</u> 5.001 (14) Standards and Duties: Employees Obey any Lawful Order Issued by a Superior Officer (Policy that was issued April 1, 2015)
OPA Finding	Not Sustained (Unfounded)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employee was ordered to appear for an in-person interview with the Office of Professional Accountability (OPA).

COMPLAINT

Prior to the OPA interview, the Named Employee and guild representative advised the OPA investigator that the Named Employee would not participate in the interview if certain conditions were not met. The OPA Investigations Lieutenant met with the Named Employee and guild representative, and advised them that refusal to participate in the interview would result in a

new complaint against the Named Employee related his failure to cooperate with a department internal investigation. The Named Employee did not participate in the interview.

INVESTIGATION

The OPA investigation included the following actions:

1. Search for and review of all relevant records and other evidence
2. Interview of SPD employee

ANALYSIS AND CONCLUSION

SPD Policy 5.002(11) states:

Employees Shall Cooperate with Department Internal Investigations: "Employees shall truthfully answer all questions, render complete, comprehensive statements, and provide all material related to investigations of misconduct. The statements will include all facts and circumstances surrounding the subject matter of the investigation, which are known by the employee. Omissions of material fact shall be classified as failure to cooperate in an internal investigation. Employees must promptly and affirmatively disclose all evidence and witnesses they know or reasonably should have known were material to the investigation. Failure to do so may result in discipline. Violation of this policy by employees may result in discipline, up to and including termination, as well as possible civil penalties, criminal prosecution and loss of Washington State law enforcement certification."

The Named Employee was duly notified of his obligation to appear for an OPA interview in connection with an OPA complaint. This notice of interview included (in part) the following language:

"By authority of the Chief of Police, you are hereby ordered to appear for an in-person interview. This interview shall be conducted in conformance with the Constitutions and laws of the United States, and the State of Washington, and the Police Officer's Bill of Rights. Failure to appear for a scheduled interview can result in discipline."

The Named Employee presented himself at the OPA offices as ordered. He was accompanied by a representative of the Seattle Police Officers Guild (SPOG). Before the interview could begin, the SPOG representative notified the OPA investigator that SPOG was going to advise the Named Employee not to answer any questions or take part in the interview. The SPOG representative stated that SPOG believed the OPA investigator, who was an Acting Sergeant assigned by SPD to OPA, did not have the authority to transmit the Garrity Advisement to the Named Employee on behalf of the Chief of Police. When the OPA investigator began the interview on the record (audio recorded) and asked the Named Employee if he had received and understood the Garrity Advisement and the Police Officers' Bill of Rights, the SPOG representative interrupted and informed the OPA investigator that SPOG objected to having an

Acting Sergeant conduct the investigation and the interview. The SPOG representative told the OPA investigator that the Named Employee "will not be protected by Garrity going forward based upon your status of being an Acting Sergeant." The SPOG representative indicated that SPOG had no objection to the Acting Sergeant asking the questions if a Sergeant or higher ranking officer was present. The SPOG representative stated that, unless these conditions were met, the Named Employee and the SPOG representative were going to walk out and not participate in the interview. The OPA investigator asked the Named Employee if he realized he would be facing an additional allegation of failing to cooperate with an OPA investigation should he leave without being interviewed. The SPOG representative interrupted and said, "we're not going to even acknowledge that. I'm not gonna [sic] let [the Named Employee] say anything anymore." The OPA investigator ended the interview a few moments later when it became clear the Named Employee was not going to participate in the interview under the current conditions.

The evidence clearly established that the Named Employee received proper and timely notification of a mandatory OPA interview and appeared for the interview at OPA at the scheduled day and time accompanied by a SPOG representative. The evidence also supported the conclusion that the Named Employee failed to cooperate with the OPA investigation when he left the OPA office before the OPA investigator had an opportunity to conduct the scheduled interview. The preponderance of the evidence from this investigation supported the conclusion that the Named Employee did not comply with the requirements of SPD Policy 5.002(11).

In considering what finding to recommend, in addition to the evidence showing the Named Employee failed to follow the policy, the OPA Director had taken into consideration the explanations provided by the Named Employee during his subsequent OPA interview in which he was questioned regarding his failure to stay for the interview in question. The Named Employee told OPA he had no intention, when he came for his interview, of not cooperating with the OPA investigation and that he intended to participate in the interview. However, the Named Employee told OPA, he found himself in the middle of a dispute between SPD and SPOG over whether or not an Acting Sergeant could conduct an OPA investigation. The Named Employee expressed frustration with the fact that the dispute could not have been settled before he came for his interview. The Named Employee told OPA that, based on what the SPOG representative told him, he became concerned that somehow he was not "protected" by Garrity if he was interviewed by an Acting Sergeant. Based on this interview and the rest of the evidence from this investigation, it was the OPA Director's conclusion that the Named Employee had every intention of cooperating with the OPA investigation and answering all questions put to him in the scheduled OPA interview. The Named Employee became alarmed and confused by the situation and the difference of opinion between SPOG and SPD regarding the authority of Acting Sergeants to conduct OPA investigations. As a result of this situation, the Named Employee decided to follow the lead of the SPOG representative and leave the interview. It was unfortunate that an individual employee was placed at risk of receiving discipline over a dispute between SPD and SPOG. Adequate and effective means for resolving this dispute existed.

Taking all the evidence into account and understanding the confusion and concern created for the Named Employee by finding himself unexpectedly in the middle of a dispute between his

Guild and his employer, the OPA Director was not inclined to recommend a sustained finding for this allegation. His primary reason for not sustaining the allegation was the belief that the Named Employee came to his interview with every intention of cooperating with the OPA investigation and only left the interview because he had been told by the SPOG representative that things were not being done in a manner that protected his (the Named Employee's) rights and interests.

The Named Employee received an order "by authority of the Chief of Police" via the emailed Interview Notice, to appear for an in-person interview. The evidence clearly showed that the Named Employee complied with that order and came to OPA at the scheduled time on that day.

FINDINGS

Named Employee #1

Allegation #1

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Shall Cooperate with Department Internal Investigations.*

Required Training: The Named Employee should be clearly and specifically told that he must obey all orders issued by a superior officer, including the requirement to cooperate with an OPA investigation and answer all questions truthfully and completely during an OPA interview, regardless of any reason why he might not want to. The Named Employee should be reminded that failure to cooperate with an OPA investigation in the future may result in discipline up to and including termination as articulated in SPD Policy 5.002(11).

Allegation #2

The evidence clearly showed that the Named Employee complied with the order to appear for an in-person interview. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Standards and Duties: Employees Obey any Lawful Order Issued by a Superior Officer.*

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.



City of Seattle

Office of Professional Accountability

April 17, 2017

Kevin Stuckey, President
Seattle Police Officers' Guild
2949 Fourth Avenue South
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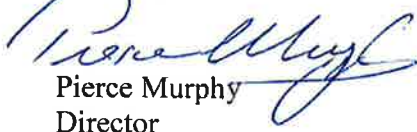
Dear Kevin,

In the Director's Certification Memo that I issued today in 2016OPA-1327, I did not recommend a sustained finding despite the named employee's refusal to answer questions during an OPA interview. That decision was a difficult one: there is no question that the named employee refused to answer questions, but I believe that the named employee did so only because of the SPOG representative's advice that the named employee "will not be protected by Garrity moving forward" because the officer who ordered the named employee to answer questions was an acting sergeant.

Whatever the dispute between SPOG and SPD regarding whether acting sergeants may issue so-called Garrity orders, I am aware of no basis for the position that the protections of Garrity depend on the rank of the person giving the order. Indeed, I have consulted with legal counsel, and have confirmed that Garrity protects an officer's self-incriminating statements in an administrative interview compelled by the threat of termination *even where there is no advisement of Garrity rights at all*. It is doubtful that Garrity plays any role in a situation like the one at issue in the DCM, where the named employee was not likely to be terminated for refusing to answer questions, and where there was no reason to believe that his answers to those questions would incriminate him. But even if that were not the case, I know of no legal basis for the notion that the protection for government employees enshrined in Garrity depends at all on the rank of the officer ordering the employee to answer questions. If SPOG believes otherwise, I invite you to share the reasons for that belief with me.

SPOG is welcome to assert its belief that a labor agreement prohibits acting sergeants from giving Garrity orders. But I urge SPOG not to assert that belief in a way that subjects its members to discipline. My recommendation as to the named employee in 2016OPA-1327 was that the employee should not face discipline for following in good faith what I hope was the good-faith advice of his union representative. But unless SPOG can point out authority for the assertion that the protection of Garrity depends on the rank of the officer ordering an employee to answer questions, then it will be difficult (to say the least) to find good faith should a situation like this one recur. In short, I would expect that if a situation like this one occurs again, I would recommend a sustained finding.

Sincerely,


Pierce Murphy
Director