



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 24, 2018

CASE NUMBER: 2017OPA-1312

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 13. Retaliation is prohibited	Not Sustained (Inconclusive)
# 3	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Inconclusive)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing, 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 13. Retaliation is prohibited	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Inconclusive)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 13. Retaliation is prohibited	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	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:

The Complainant alleged that the Named Employees engaged in bias towards him when they treated him inappropriately during an interaction with him. The Complainant further alleged that the Named Employees were dishonest in their reporting and in an email that Named Employee #1 sent to the Complainant’s commanding officer, which resulted in the Complainant receiving discipline from his employer. The Complainant lastly alleged that the sending of this email by the Named Employees was a retaliatory action.

STATEMENT OF FACTS:

The Named Employees observed a fight involving between seven to ten individuals. The Named Employees approached the fight and ordered the individuals to cease. The individuals complied with the Named Employees’



directions to stop fighting and were separated. After investigating the incident further, it was determined that there were two main participants in the fight.

The Named Employees learned from one of the primary participants that he was walking with his friend – later identified as the Complainant – when the other primary participant complimented the Complainant’s shirt. He and the Complainant viewed this as an insult and the fight began. During the fight, the participants broke a window. Due to the property damage, the officers decided to place both participants under arrest for fighting, citing to SMC 12A.06.025.

This is where the Complainant’s account of the incident differs significantly from the Named Employees’. The Complainant stated that he was not intoxicated that evening, but he was upset with how his friend was treated by police. The Complainant recounted that both Named Employee #2 (NE#2) and Named Employee #3 (NE#3) asked him what occurred. He told them that he saw his friend on the ground being assaulted by other individuals. The Complainant stated that he asked NE#3 questions about the basis for the arrest and indicated that the fight did not occur where the glass had been broken. The Complainant told OPA that NE#3 grew “visibly agitated” with him and then became “hostile.” He stated that NE#3’s body language grew “tense” and that he acted as if he was “gearing up for a physical confrontation.” The officers never arrested the Complainant and did not test him for intoxication. When the Complainant went to the precinct to get his friend, he recalled that NE#3 told him with a smirk, “wait ‘til your command hears about tonight.”

The Complainant told OPA that the Named Employees then contacted his employer and provided a fabricated account of what had occurred. The Complainant stated that he was then subjected to a disciplinary tribunal, for which he was required to hire an attorney. The Complainant indicated that his commanding officer accepted the word of the officers, stating to him regarding the police: “why would these guys make this up.” This resulted in a guilty finding, a loss of a promotion, and him being removed from the list for officer training school. As the Complainant summarized for OPA: “These Officers knew they had no reason to arrest me that night and they did not arrest me, instead they vindictively used their power and status as police officers and most likely former military service to impact my life.”

According to the Named Employees, the Complainant interjected himself into the conversation between NE#2 and his friend. The officers described the Complainant as intoxicated and stated that he continuously asked why his friend was being arrested. The officers explained that the friend was being arrested for fighting and told him that the fight had broken a window. The Complainant asked to see the broken window and the officers pointed it out to him. He then tried to push through the officers to see it for himself. Because the window was in the middle of an active crime scene, NE#3 stated that he put his hand up and prevented the Complainant from doing so. The officers described that the Complainant then grew “irate.” The officers reported that the Complainant told the officers that they could not touch him. They stated that he began to call them homophobic slurs and to curse at them. The officers alleged that the Complainant repeatedly said “suck my dick,” made other inappropriate statements, and called NE#3 a “faggot.” NE#3 stated that, at one point, the Complainant said to him: “take off the vest and see what happens.” NE#3 interpreted this as a physical threat. The officers then told the Complainant that he was free to leave and he did so.

The officers stated that they treated the Complainant appropriately, but that the Complainant was intoxicated, belligerent, and aggressive. They denied engaging in bias towards him. Named Employee #1 (NE#1) acknowledged that he sent an email to the Complainant’s commanding officer detailing the Complainant’s behavior. He believed that this was an appropriate course of action. Both NE#2 and NE#3 knew that the email was sent and also believed it to be



appropriate. The Named Employees stated that their reporting was accurate and they denied making any misstatements in their reports and in the email to the Complainant's commanding officer.

This matter was initiated when the Complainant filed a complaint with OPA. OPA interviewed the Complainant, as well as the Named Employees. OPA also interviewed the other individual involved in the fight; however, he did not remember any details of what occurred given his level of intoxication. OPA attempted to interview the Complainant's friend but was ultimately unable to do so as the friend did not respond to OPA's inquiries.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

As discussed more fully herein, there is a dispute of fact as to whether the officers treated the Complainant appropriately, whether they fabricated the slurs and insults he was reported as saying, and whether they inappropriately retaliated against him. However, even if all of these allegations are true, there does not appear to be any evidence supporting the Complainant's claim that the Named Employees' actions towards him were motivated by his status as an African-American male serving in the military.

All of the officers denied that bias based on the Complainant's race played any part in their actions. Notably, as NE#1 explained, the officers arrested the Complainant's friend, who was White, but did not arrest the Complainant. Were the officers motivated by bias it follows that they would have arrested the Complainant as well or instead.

Moreover, even had the officers' actions been influenced by the Complainant's military status, being a member of the military is not a protected class for the purposes of this policy.

I see no evidence in the record establishing bias on the part of the Named Employees. As such, I recommend that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 13. Retaliation is prohibited

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-13.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy" or "who otherwise engages in lawful behavior." (*Id.*) Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)



The Complainant alleged that the Named Employees retaliated against him when they falsely reporting to the Complainant's commanding officer that he was intoxicated, that he used homophobic slurs and curse words, and that he was extremely aggressive and belligerent towards officers. The Complainant contended that they did so simply because he spoke out against his friend's arrest, which he deemed unjustified, and, by doing so, challenged the Named Employees' authority. The Complainant asserted that the Named Employees went directly to his commanding officer and made false claims for the express purpose of causing him to suffer adverse consequences.

NE#1 wrote an email to the Complainant's commanding officer detailing the Complainant's allegedly inappropriate behavior. After recounting the Complainant's actions, NE#1 wrote:

It is with great reluctance that I notify you of this incident...As a veteran myself, along with nearly every officer on that line tonight, we know this incident does not represent Sector Seattle or the Coast Guard. This is the first time I have even considered notifying the chain of command of a service member with whom I have come in contact. I only reach out to you because [the Complainant's] behavior this morning was by far the worst hostility, harassment, and disrespect I have ever encountered in my nearly ten years of working Capitol Hill.

NE#1 stated that he believed that doing so was appropriate under the circumstances. NE#1 believed that the Complainant's behavior was some of the worst he had ever seen. The other Named Employees agreed. NE#1 told OPA that he had previously been told by the Coast Guard internal affairs unit to notify them of matters involving their personnel. NE#1 believed it was more effective to notify the Complainant's employer than to place the Complainant under arrest, which he contended would have been warranted under the circumstances. The other Named Employees also agreed with this. While all of the Named Employees knew of and may have read the email, NE#1 stated that he drafted it, was responsible for its content, and made the decision to send it.

The Complainant stated that, as a result of this email, he was investigated by the Coast Guard and was charged with inciting a riot, drunk and disorderly conduct, and obscene gestures. He claimed that he was found guilty by a military tribunal, but that the ruling was solely based on the tribunal accepting the word of the Named Employees and believing that, as law enforcement officers, they would not lie. As a result of the guilty finding, he lost an opportunity to promote and to become a commissioned officer (he now has to wait three additional years). He told OPA that, prior to this incident, he had a clean record for his eight years in the Coast Guard.

As discussed below, there is a dispute of fact between the officers and the Complainant regarding the nature of his conduct during the incident. He contends that the Named Employees' allegations were fabricated. They deny that. If, as the Complainant asserts, NE#1 wrote an email to the Complainant's commanding officer, knowing that the allegations were fabricated and with the sole intent to have the Complainant be punished, that would constitute retaliation and would violate this policy. On the other hand, if the Named Employees' recounting of this incident was accurate, I do not believe that it would have constituted retaliation for NE#1 to let the Complainant's employer know about his conduct. Notably, had it been the case that a SPD officer engaged in similar behavior as that attributed to the Complainant, OPA expects that an outside law enforcement agency would notify our office. Ultimately, however, I cannot conclusively determine what took place and, thus, cannot decide whether or not NE#1 retaliated against the Complainant.



I note that SPD Policy 12.090(IV) arguably applies to this situation. This policy states that: “Departmental correspondence, including official letters and emails, addressed to entities outside the Department must be signed or approved by a Lieutenant or higher authority.” NE#1 sent an email from his work account that detailed a matter of official law enforcement business. As such, it would have been best practice for him to screen this email with a supervisor prior to sending to the Complainant’s commanding officer. He acknowledged as much at his OPA interview and indicated that he would do so in the future. I counsel him to make sure that this is the case.

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

SPD Policy 5.001-POL-10 requires that Department employees be truthful and complete in all communication.

Here, the Named Employees alleged that the Complainant was intoxicated, that he used homophobic slurs and curse words towards them, and that he acted in a continuous argumentative and belligerent fashion. The Complainant, to the contrary, contended that he was not drunk (he stated that he had two drinks over five hours). He further stated that, while he was upset at the treatment of his friend, he did not act aggressively or belligerently towards the officers. He opined that they were upset at him because he challenged their authority. Lastly, the Complainant stated that he did not use the homophobic slurs or the curse words that the Named Employees alleged that he did. Notably, the Complainant stated that he had a brother who was gay and that he found homophobic slurs, including one particular slur he was said to have uttered, repugnant.

Both of these accounts cannot be correct. Either the Complainant or the Named Employees are embellishing or potentially fabricating what occurred. As discussed above, there is no Department or third party video of this incident. Moreover, the civilian witness who was interviewed did not recall what occurred because he was intoxicated and the Complainant’s friend did not respond to OPA’s requests for an interview. While the fact that the Complainant was convicted by a military tribunal bears some weight, he claimed that the tribunal’s finding was simply based on it taking the word of the Named Employees and its belief that officers would not make something like this up. There is no further evidence in the record concerning what facts and evidence the tribunal considered and what evidentiary standard it applied.

Ultimately, while I believe that the evidence leans towards the Named Employees’ version of the events, I cannot conclusively make this determination. As such, I recommend that this allegation be Not Sustained – Inconclusive against all of the Named Employees.

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

Named Employee #2 - Allegations #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.



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

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 13. Retaliation is prohibited

NE#1 told OPA that he was responsible for the decision to send an email to the Complainant's chain of command concerning this incident. As such, and even though NE#2 and NE#3 agreed with the sending of the email, NE#1 was responsible for its contents, as well as for the effect the letter had on the Complainant's career. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against NE#2 and NE#3.

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

Named Employee #2 - Allegation #3

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #3 - Allegations #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #2

5.001 - Standards and Duties 13. Retaliation is prohibited

For the same reasons as stated above (see Named Employee #2, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #3

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Inconclusive.

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