



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 8, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0116

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 – Standards and Duties 14. Retaliation is prohibited	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

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:

It was alleged that the Named Employee engaged in retaliatory and unprofessional behavior towards two other officers.

ADMINISTRATIVE NOTE:

OPA initially recommended that Allegation #2 be Sustained against the Named Employee. However, at the discipline meeting in this matter and as discussed more fully below, the chain of command provided insight into this incident indicating that a Training Referral may be the more appropriate result. OPA found the chain of command’s analysis to be compelling and, as a result, amends its finding.

SUMMARY OF INVESTIGATION:

An officer – referred to here as Witness Officer #1 (WO#1) – and an Acting Sergeant – referred to here as Witness Officer #2 (WO#2) – filed an EEO complaint against Named Employee #1 (NE#1). WO#1 and WO#2 alleged to EEO that, after reporting misconduct engaged in by their unit commander (*see* 2020OPA-0103), they had been subjected to retaliation. The misconduct they reported resulted in the unit commander being transferred from the unit. At issue in this case is a verbal altercation that occurred between NE#1, a friend of the unit commander, and WO#1 and WO#2.

WO#1 and WO#2 asserted that, while driving their patrol vehicle, they saw an unmarked SPD vehicle following them. They recounted that, when they parked, the unmarked vehicle blocked their path and activated its flashing lights. They said that NE#1 got out of the unmarked vehicle and approached WO#2, who was in the driver’s seat. They described that NE#1 began ranting at them, including telling them that: they lived in a “glass house”; stating that they did not do anything at work; and claiming that, while she did not file complaints like other people, WO#1 and WO#2 were being mapped, people were keeping an eye on them, and that someone was going to come after



them. WO#1 and WO#2 confirmed that NE#1 was close friends with the unit commander. The also noted that NE#1 stated, referring to the unit commander: "I can't believe you guys did this to my friend."

As part of its investigation, OPA interviewed WO#1 and WO#2, who confirmed the allegations they made to EEO. OPA also interviewed NE#1. She said that, prior to her confronting WO#1 and WO#2, there were concerns with them consistently not working their full shifts (these allegations were investigated under 2020OPA-0121). These concerns were raised to supervisors, but no action appeared to be taken. She told OPA that one unit sergeant (who was also alleged to have retaliated against officers who reported misconduct on the part of the unit commander – see 2020OPA-0188), told her that officers should discuss concerns amongst themselves and, where this did not resolve the issues, then raise them with supervisors.

NE#1 characterized her interaction with WO#1 and WO#2 as an "encounter" not a "confrontation." She said that, at the time of the encounter, she was "frustrated." She recalled that she mapped WO#1 and WO#2 at the fire station and tried to locate them. They were not there but she later saw their vehicle further south in the International District. She said that she decided to stop to speak with them. She indicated that she told the officers: "hey guys, we're leaving a little bit early, aren't we?" When WO#2 denied this, she said that they were in civilian clothes and could not respond to calls and said that they were leaving an hour early. The officers started arguing with NE#1 and she reminded them that their unit commander had instructed them not to abuse their time and that, by doing so, they were functionally stealing time from the City. NE#1 said that other officers were complaining about the officers' conduct. NE#1 acknowledged that, during this conversation, she said to the officers: "I'm not a fucking idiot, you guys need to get your shit together." She told them that they were creating a hostile work environment and needed to do their jobs. She then walked away.

NE#1 acknowledged telling the officers that they lived in a "glass house" and that people were watching them. She denied, however, ever mentioning or referencing the unit commander. She stated that she did not say to them: "I can't believe you did this to her." She rejected the assertion that she told the officers that people would be coming after them.

She later informed her sergeant that she had spoken with the officers. Several days later, she learned that the officers had filed this OPA complaint against her and she was transferred from the unit. She then filed a complaint against the officers. She explained that she did so to "tell her story" and to "cover herself."

NE#1 confirmed that she and the unit commander were friends and that had known each other for more than 20 years. Everyone in the unit knew about the complaint that the officers had initiated against the unit commander, as well as the fact that the unit commander was removed from the unit because of it.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 – Standards and Duties 14. Retaliation is prohibited

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) 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.*)

It was alleged that NE#1 violated this policy in two respects. First, it was alleged that NE#1 retaliated against WO#1 and WO#2 by filing an OPA complaint against them when she became aware of this case. Second, it was claimed that NE#1 threatened WO#1 and WO#2 in retaliation for them reporting misconduct committed by her friend, the unit commander.

With regard to the first question, OPA does not find that NE#1’s filing of an OPA complaint represented retaliation. Notably, while OPA frowns on such action, it has not found retaliation in similar past cases. OPA also does not find it unreasonable that NE#1, who does not have an OPA history and lacks experience with OPA’s processes, believed that this was an appropriate mechanism to tell her side of the story.

The second question is, in OPA’s opinion, a closer call. As discussed more fully below, OPA finds that NE#1’s decision to confront WO#1 and WO#2 to have not been a good one. However, OPA does not have sufficient evidence to establish that she engaged in these actions with the motive to retaliate against the officers. Most notably, there is a significant dispute of fact that precludes this finding in that, while WO#1 and WO#2 stated that NE#1 explicitly referenced her friendship with the unit commander, NE#1 denied doing so. She said that, instead, she engaged them in a discussion because of her concerns regarding their work attendance and guidance from a sergeant that officers should work out such issues among themselves.

In reaching this finding, OPA has significant questions concerning the timing of NE#1’s conduct – specifically, how close in time it was to preliminary corrective action being taken against the unit commander. OPA similarly questions NE#1’s account given her admitted closeness to the unit commander and the fact that she confirmed saying virtually everything that was attributed to her by WO#1 and WO#2 except for the statement concerning the unit commander. Lastly, OPA questions why, if NE#1’s sole motive was to confront the officers about their work schedules, she would have chosen to have done so in such a fashion.

Ultimately, however, given the lack of dispositive evidence establishing retaliation, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)



As indicated in the initial DCM for this case, OPA opined that NE#1's conduct in mapping other officers' locations, following them to that location in a Department vehicle, confronting them in public, and engaging in a conversation that included profanity and could have been deemed threatening ("people are watching you") was unacceptable and unprofessional. OPA noted that there were other ways in which this same conversation could have been achieved rather than how NE#1 proceeded, including going through a supervisor.

At the discipline meeting in this matter, the chain of command raised several considerations. First, the chain of command indicated that the officers' unit had a number of personnel concerns, which included situations where employees, including WO#1 and WO#2, may not have been working full days. This caused frustration for others that were affected by this, including NE#1. There were also multiple personality conflicts between officers, as well as between officers and supervisors, which created, at times, a toxic work environment. The chain of command further noted that NE#1's prior attempts to address these matters through her direct supervisors (including Sergeants and a Lieutenant) were unsuccessful with those supervisors either taking no action or telling officers to resolve these issues between themselves. The chain of command stated that this is what NE#1 did, even if the way in which she approached this situation was not optimal.

OPA finds this analysis to be compelling. While OPA still has concerns with the manner in which NE#1 approached WO#1 and WO#2, particularly that she did so in public, and with the tenor her conversation with them, OPA recognizes the complexity of the situation and the difficult place NE#1 was put in by the overall lack of supervision in her unit. Accordingly, OPA changes its previous finding from Sustained to Not Sustained – Training Referral.

- **Training Referral:** NE#1 should receive counseling concerning her decision-making during this incident and the manner in which she approached WO#1 and WO#2. The chain of command should bring up other ways in which she could have handled this situation that did not include confronting them in public, as well as discuss the language that she chose to use. NE#1 should be counseled to avoid similar situations in the future. This counseling and any associated retraining should be documented, and this documentation should be maintained in an appropriate database.

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